

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

C O R A M

THE HON'BLE Mr.JUSTICE S.M.SUBRAMANIAM

CRP(NPD).NO.70 OF 2012 and M.P.No.1 of 2012

Harikrishnan

... Petitioner

Versus

Manjula

... Respondent

Criminal Revision Petition filed under Section 115 of CPC praying against the order and decreetal order I.A.28 of 2010 in O.S.303 of 2004 on the file of Principal District Munsif Court, Ulundurpet, dated 05.10.2010.

For Petitioner	...	Mr.PA.Sudeshkumar
For Respondent	...	Mr.Himavanth for Mr.V.Raghavachari

ORDER

This Civil Revision Petition is filed against the order made in I.A.28 of 2010 in O.S.303 of 2004 dated 05.10.2010 on the file of Principal District Munsif Court, Ulundurpet.

2. The facts of the case in nutshell, is as follows:-

The respondent/plaintiff has filed a suit in O.S.No.303 of 2004 for

maintenance. The marriage between the petitioner and the respondent was solemnised on 03.05.1999. Subsequently they were separated and the respondent filed a suit for maintenance. The petitioner/defendant was served with a notice by the Court and he did not appear before the trial Court. The suit was decreed ex parte on 03.09.2004. Accordingly, the maintenance amount of Rs.750/- per month was ordered to be paid by the petitioner to the respondent herein. The petitioner/defendant filed an application to set aside the ex parte decree after a delay of 1921 days. The trial Court dismissed the petition on the ground that, the petitioner/defendant had knowledge about the ex parte decree and the delay of 1921 days was not properly explained.

3. Heard the learned counsel for the petitioner/husband and the learned counsel for the respondent/wife.

4. The counsel for the petitioner contented that the respondent/wife deserted him and he is not liable for payment of any maintenance to the respondent and further stated that the conduct of the respondent was intolerable and she harassed him.

5. The counsel for the respondent/wife contented that, the facts narrated by the petitioner are in-correct and the petitioner contracted second marriage and these facts were placed before the trial Court.

6. Considering the facts and the circumstances and the contentions of the learned counsel for both petitioner and respondent, the trial Court ordered a meager amount of Rs.750/- per month as maintenance. Further the delay of 1921 days in filing the petition to set aside the exparte decree is enormous which cannot be entertained in the interest of justice. That apart, this Court passed a conditional order on 27.04.2015 directing the petitioner to deposit the entire arrears amount of maintenance as ordered by the Court below within a period of four weeks. The learned counsel for the petitioner has no instructions with regard to the compliance of the conditional order passed by this Court. The learned counsel for the respondent says that the respondent/wife has not received any arrears of maintenance as ordered by this Court. Therefore, the petitioner is not entitled for any relief due to the non compliance of the conditional order passed by this Court and even on merits, the delay in filing of application to set aside the exparte order is 1921 days, which cannot be condoned.

S.M.SUBRAMANIAM. J,
DPQ

7. In view of the fact that it is a case for maintenance and the right of maintenance is a basic right and involves the survival of a married women, the contention raised by the learned counsel for the petitioner is devoid of merits and the same cannot be accepted.

8. Accordingly, the Civil Revision Petition is dismissed and the order passed by the learned Principal District Munsif Court, Ulundurpet on 05.10.2010 in I.A.No.28 of 2010 in O.S.No.303 of 2004 is hereby confirmed. Consequently Miscellaneous Petition is also closed. No cost.

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Index : Yes / No

Internet : Yes / No

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