



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Civil Appellate Jurisdiction )

Monday, the Twenty Second day of August Two Thousand Sixteen  
PRESENT

**The Hon`ble Mr.Justice K.KALYANASUNDARAM**

CMP(MD) No.7034 of 2016 IN CMA(MD) No.SR28632 of 2016

1 RITU MEHTA

2 VIMAL KUMAR JAIN

... PETITIONERS/APELLANTS/RESPONDENTS IN GWOP

Vs

PRAG N.MEHTA

... RESPONDENT/RESPONDENT/PETITIONER IN GWOP

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 315 days in filing above CMA.(MD).SR.No.28632/2016 filed against the impugned Ex-Parte Order and decree passed by the District Judge, Sivagangai in GWOP.No.24/2014, dated 11.06.2015 pending disposal of the above CMA.(MD).SR.No.28632/2016.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.YUVARAJ SAMANT, Advocate for the petitioner and of M/S.HEMA SAMPATH, Senior Counsel for MR.K.S.MUTHU, Counsel for the respondent, the court made the following order:-

This application is filed to condone the delay of 315 days in filing the appeal.

2.Heard Mr.Yuvaraj Samant, learned counsel appearing for the petitioner and M/s.Hema Sampath, learned Senior counsel appearing for Mr.K.S.Muthu, learned counsel, who is on record for the respondent.

3.In the affidavit filed in support of the petition, it is stated that the marriage between the petitioner and respondent was solemnised on 06.12.2004 at Hotel Kanak Sagar in Ajmer District of Rajasthan. The respondent and his family members were continuously demanding dowry from her and also harassed her by causing mental and physical cruelty. Out of the lawful wedlock, a child Vandan was born to them on 20.10.2007. After the birth of the child, the level of the ill-treatment increased. So, she left the matrimonial home. However, she did not choose to file any complaint in the hope that the behaviour of her husband will change in one day or other.

4.It is also averred that the respondent started to harass her father and her minor son Vandan. The respondent filed HMOP No.171 of 2014 on the file of the Subordinate Judge, Devakottai, for restitution of conjugal rights and GWOP No.24 of 2014 before the District Court, Sivagangai, for custody of the child. She gave a Vakalat to a counsel to appear on her behalf. But unfortunately, he failed to make proper representation before the court. So, the petition GWOP was decided ex-parte and the status of the cases were also not informed to her.

5.The petitioner would further state that she filed applications seeking transfer of the cases to Ajmer, without knowing the fact that



the ex-parte order was passed in GWOP No.24 of 2014. In the reply filed in the Transfer Petition (Civil No.750 of 2015, it is stated that the transfer petition has become infructuous, since the GWOP No.24 of 2014 had already been decided ex-parte. Immediately, she approached the counsel and filed this appeal. Hence, there was a delay.

6.The respondent filed a detailed counter, refuting the allegations made in the petition.

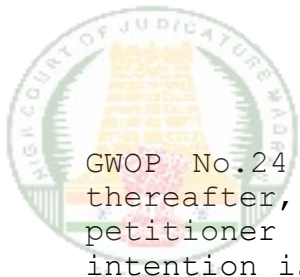
7.The learned counsel appearing for the petitioner would submit that HCP filed by the respondent in HCP(MD)No.488 of 2014 came to be dismissed on 28.08.2014 by recording the fact that the petitioner was not under illegal detention and his minor child Vandan P.Mahta living happily with the mother and grand-father and the Division Bench also perused the fee receipt issued by the School, which would show that the minor was studying in Ajmer, since 2013 and therefore, the District Court, Sivagangai has no jurisdiction to entertain the GWOP No.24 of 2014.

8.The learned counsel would further urge that the counsel engaged by the petitioner before the lower court has not informed the status of the case and without knowing the fact that GWOP No.24 of 2014 was decreed ex-parte on 30.04.2015, the petitioner was pursuing the Transfer Petition (Civil) No.830 of 2015 before the Apex Court. Further, when the interim stay granted in the transfer petition was in force, the respondent filed two other applications for direction to the Director General of Police, Jaipur and the Inspector General of Police, Ajmer to grant police protection, which were also ordered without notice to the petitioner. The petitioner has sufficiently explained the delay in filing the appeal and in the interest justice, the delay has to be condoned.

9.Per contra, the learned Senior counsel appearing for the respondent would vehemently contend that normal place of residence of the minor child shall be taken into account, while deciding the jurisdiction of the court and the minor child was residing with the respondent, till he was taken to Ajmer in the summer holidays under the pretext that he will be brought back to pursue his study in Tamil Nadu. So, the District Court, Sivagangai has territorial jurisdiction to decide the GWOP.

10.It is further submitted that both the petitioner and the respondent have filed two original petitions in two different forums under Section 9 of the Hindu Marriage Act. When the respondent is willing for reunion, the petitioner has to join with him, instead of filing frivolous cases against the respondent.

11.The learned Senior counsel would further submit that in GWOP No.24 of 2014, the petitioner appeared through her counsel and when it was referred to Lok Athalat on 11.04.2011, she was not ready and willing to explore the possibility of settlement and only thereafter, the case was decided ex-parte on 30.04.2015. After disposal of the case, the petitioner deliberately filed the transfer petition and obtained stay. After reply filed by the respondent, the transfer petition itself was dismissed by the Apex Court on 30.06.2016. In the meanwhile, the respondent filed counter in the transfer petition stating that already



GWOP No.24 of 2014 was decided ex-parte on 11.06.2015, however long thereafter, this appeal was filed without any proper explanation. The petitioner cannot claim to be an innocent or helpless lady and her only intention is to prolong the litigation with an ulterior motive.

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12.This court has considered the rival submissions made on either side and perused the materials placed before this court.

13.It is seen from the records that this appeal has preferred against the ex-parte order passed in GWOP No.24 of 2014, dated 30.04.2015. The case of the petitioner is that the counsel engaged by her, did not defend her case properly and also not intimated the status of the case. Hence, the delay occurred. The petitioner has also questioned the territorial jurisdiction of the District Court, Sivagangai in passing the order. Considering the length of delay and the explanation offered by the petitioner, this court is of the considered opinion that the petitioner has shown sufficient cause for condoning the delay.

14.In the result, this application is allowed and the delay is condoned. The Registry is directed to number the appeal and post the matter on 26.08.2016 under caption **"For Admission"**.

sd/-  
22/08/2016

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Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO

THE DISTRICT JUDGE, SIVAGANGAI.

COPY TO

THE SECTION OFFICER,  
JUDICIAL SECTION,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S. K.K.KANNAN Advocate SR.No.46237

ORDER  
IN  
CMP(MD) No.7034 of 2016  
IN  
CMA(MD) No.SR28632 of 2016  
Date :22/08/2016

PA/GSV-PM/SAR W/23.08.2016/3P/4C (IT)