



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.162 of 2016 (NPD)

and

C.M.P.(MD)No.746 of 2016

Arulselvi

.. Petitioner

Vs.

Sengol Lawarance

.. Respondent

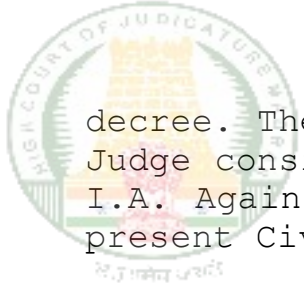
PRAYER: Civil Revision Petition is filed, under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order, dated 16.11.2015 passed in I.A.No.46 of 2014 in I.D.O.P.No.23 of 2013 on the file of the Principal District Judge, Pudukkottai by allowing the Revision Petition.

For Petitioner : Mr.R.Manoharan

For Respondent : Mr.Porkodi Karnan

ORDER

The petitioner is the wife. The Respondent is the husband. The marriage between the petitioner and the respondent was solemnized on 16.05.2008. Due to dispute between the petitioner and the respondent, both are living separately. The respondent filed I.D.O.P.No.23 of 2013, on the file of the Principal District Court, Pudukkottai for Restitution of Conjugal Rights and in the said IDOP, ex-parte decree was passed on 20.03.2014. When the petitioner came to know about the ex-parte decree, immediately she filed a petition to set aside the ex-parte decree along with I.A.No.46 of 2014 to condone the delay in filing the petition to set aside the ex-parte decree. The failure to non-appearance is neither willful nor wanton. In the said I.A., the respondent filed counter affidavit and stated that after the ex-parte decree, the respondent sent notice on 03.05.2014 to the petitioner to come and join with him in matrimonial home. The said notice was received by the petitioner. She sent a reply on 11.06.2014. Again the respondent sent re-jointer on 16.06.2014, it was received by the mother of the petitioner. Therefore, the reason given by the petitioner is not bonafide reason and that she came to know the ex-parte decree only belatedly and immediately she filed the petition to condone the delay in filing the set aside the ex-parte



decree. Therefore, he prayed for dismissal of the I.A. The learned Judge considering the facts and materials on record, dismissed the I.A. Against the order of dismissal, the petitioner has filed the present Civil Revision Petition.

2. The learned counsel for the petitioner submitted that the learned Judge dismissed the application without considering the reasons given by the petitioner for the delay. The learned Judge ought to have seen that the delay is neither willful nor wanton. The matter was posted before the Mediation and Conciliation Centre and was not informed the date of hearing.

3. Heard Mr.R.Manoharan, learned counsel appearing for the petitioner and Mr.Porkodi Karnan, learned counsel appearing for the respondent.

4. I have carefully perused the entire materials on record and arguments of counsel for the petitioner.

5. The petitioner filed I.A.No.46 of 2014 for condonation of delay in filing the petition to set aside the ex-parte decree. The petitioner has given valid reason for delay. It is well settled that the attitude of the petitioner must be bonafide, which is criteria for condoning the delay. The petition filed by the respondent is with regard to matrimonial dispute. In the circumstances, the petitioner is entitled to give an opportunity to contest the case on merits.

6. In the result, the Civil Revision Petition is allowed. The order of the Principal District Judge, Pudukkottai is set aside. The learned Principal District Judge, Pudukkottai is directed to take up the I.A.No.46 of 2014 on file and decide the same on merits and dispose the matter within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.
22.02.2016

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Court, Pudukkottai.

+One cc to M/s.R.Manoharan, Advocate, SR.No.10349

+One cc to M/s.Polax Legal Solutions, Advocate, SR.No.10128

am

<https://hservices.courts.gov.in/services> B1/43/SG/DR/9/3/2016

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