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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.2549 of 2016 (NPD)

S.Nethaji .. Petitioner

Vs.

Vasuki, W/o.Nethaji .. Respondent

Civil Revision Petition filed under Section 115 C.P.C., against the order, dated 27.01.2016, made in I.A.No.168 of 2010 in H.M.O.P.No.66 of 2004, on the file of the Subordinate Court, Devakottai.

For Petitioner : Mr.B.Muruganandam

ORDER

This Civil Revision Petition has been filed against the order, dated 27.01.2016, made in I.A.No.168 of 2010 in H.M.O.P.No.66 of 2004, on the file of the Subordinate Court, Devakottai.

2. The petitioner is the respondent in H.M.O.P.No.66 of 2004 on the file of the Subordinate Court, Devakottai. The respondent filed the said H.M.O.P., for divorce on the ground of cruelty.

3. Facts of the case:

(i) The petitioner was set *ex-parte* and *ex-parte* decree was passed on 10.01.2005. The petitioner filed I.A.No.68 of 2010 under Section 5 of the Limitation Act, to condone the delay of 1855 days in filing petition to set aside the *ex-parte* decree. According to the petitioner, he was residing at Chennai and he suffered heavy loss in the business and therefore, he suffered mentally and he went to Temples for one year in search of peace of mind. Thereafter, during the year 2006 to 2009, he was taking treatment at Chennai for his knee pain. He returned to Devakottai in January 2010. He came to know about that one Prema, W/o.Karuppaiah entered into a sale agreement with the respondent and a civil suit is pending between them and when he met his Advocate *viz.*, Mr.Rajkumar, Karaikudi, to enquire about H.M.O.P.No.66 of 2004, he informed about the *ex-parte* decree passed in the H.M.O.P. and also informed him that the bundle got mixed up with other bundles and it is lost. Therefore, he engaged another Advocate and filed I.A.No.168 of 2010 to condone the delay in filing the petition to set aside the *ex-parte* decree.

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(ii) The respondent filed counter affidavit and submitted

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that the reasons given by the petitioner are not true, valid and sufficient to condone the huge delay. The respondent and her two daughters are living at Delhi. The second daughter is married and the first daughter is about to be married. When the respondent was residing with the petitioner, he tried to put poison in the food in the year 1989 and attempted to kill her. The respondent escaped and from that date onwards, she is living separately. If the petition is allowed, it will cause great hardship to the respondent and her two daughters.

(iii) The petitioner examined three witnesses and did not mark any document. The respondent did not let in any oral and documentary evidence.

(iv) The learned Subordinate Judge, Devakottai, considering the materials on record and averments made in the affidavit and the counter affidavit, dismissed the application holding that the petitioner has not substantiated his contention that he has taken treatment from the year 2006 to 2009 and he has not produced any document to prove the treatment taken by him. No acceptable evidence was produced to condone the delay.

4. Against the said order of dismissal, dated 27.01.2016, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel for the petitioner submitted that the application under Section 5 of the Limitation Act must be considered liberally and the petitioner has given valid reason for not appearing before the Trial Court and also has given valid reason for setting aside the *ex-parte* decree. If the application is allowed, there is a possibility of settlement between the petitioner and the respondent and therefore, he prayed for allowing the Civil Revision Petition.

6. Heard the learned counsel for the petitioner.

7. The respondent filed H.M.O.P.No.66 of 2004 for divorce. The petitioner engaged an Advocate and subsequently, did not contest the H.M.O.P. An *ex-parte* decree was passed on 10.01.2005. The petitioner has come forward with the present petition to condone the delay of 1855 days for filing petition to set aside the *ex-parte* decree. The petitioner has not substantiated his contention that he was taking treatment for his knee pain from 2006 to 2009 and did not produce any document. The respondent made serious allegations against the petitioner that he tried to kill her by giving poison.

8. From the materials available on record, it is seen that the petitioner has not given any valid or acceptable reason for condoning the delay.

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9. In **2013 (5) CTC 547 [Esha Bhattacharjee Vs. Managing Committee of Rahunathpur, Nafar Academy and others]**, it is held as follows:

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11. In ***Improvement Trust, Ludhiana v. Ujagar Singh and Ors.*** [(2010) 6 SCC 786], it has been held that while considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

12. A reference to the principle stated in ***Balwant Singh (dead) v. Jagdish Singh and Ors.*** [(2010) 8 SCC 685] would be quite fruitful. In the said case the Court referred to the pronouncements in ***Union of India v Ram Charan*** [AIR 1964 SC 215], ***P.K. Ramachandran v. State of Kerala*** [(1997) 7 SCC 556] and ***Katari Suryanarayana v. Koppisetti Subba Rao*** [(2009) 11 SCC 183] and stated thus:

> "25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.
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> 26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.""

10. The application for condonation of delay has to be considered liberally. The length of delay is not criteria, but the reasons given must be sufficient reason to condone the delay. The application must be *bona fide* and should not be filed for the purpose of dragging on the proceedings. Condonation of delay should not cause due prejudice to other side. Applying these

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principles to the facts of the present case, it is evident that the petitioner has not given sufficient reasons to condone the delay. The learned Subordinate Judge has exercised his jurisdiction in proper perspective and dismissed the application. There is no illegality or irregularity in the order passed by the learned Subordinate Judge, warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To
The Subordinate Judge, Devakottai.

+1 CC to Mr.B.MURUGANANDAM, Advocate, SR No.80953

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