

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.954 of 2011

ORDER :

This Revision is filed challenging the order dt.30.08.2010 in I.A.No.52 of 2005 in M.O.P.No.13 of 2001 on the file of Senior Civil Judge, Sompeta.

2. The petitioner herein is petitioner in the said O.P., which he filed against respondent seeking dissolution of their marriage.

3. The respondent was set *ex parte* on 08.01.2003 and on 19.08.2003, an *ex parte* decree was passed against her. She filed I.A.No.52 of 2005 on 31.08.2005 to condone the delay of (712) days in filing the application to set aside the *ex parte* decree.

4. In the affidavit filed therein she stated that she and petitioner had shifted to Kedaripuram Village since August, 2000 where she was tortured and ill-treated by petitioner forcing her to make a complaint to the Police at Kasibugga. She alleged that the O.P. was filed making false allegations against respondent showing the address of respondent in Berhampur although she was staying with petitioner at Kedaripuram. She further stated that he directed her not to go anywhere without his consent and so she was confined to the house and was leading marital life with petitioner by staying at Kedaripuram. She alleged

that this was done by him with a dishonest intention to get an *ex parte* decree by playing fraud on the Court. She further pointed out that she engaged an Advocate and also filed her appearance in the matter. She alleged that petitioner approached her brothers and elders and represented that he committed a mistake by filing O.P. and stated that he would withdraw the same as she was living with petitioner. She also stated that petitioner also promised before the elders and also before the Station House Officer, Kedaripuram that he would withdraw the O.P. and would not pursue the matter and would look after the respondent with love and affection. Because of these assurances of petitioner, the respondent stated that she did not file her counter in the case because of which she was set *ex parte* and the *ex parte* decree was passed. She stated that she came to know about the *ex parte* decree only in August, 2005 when the respondent once again started ill-treating her and asked her to leave the house on the ground that he obtained a decree of divorce. She stated that only then she came to know about the decree being passed on 19.08.2003. She stated that respondent played fraud and obtained a decree against her.

5. Counter-affidavit was filed by petitioner opposing this application. He denied the allegations leveled against him by respondent. He pleaded that respondent received

the summons in the O.P. but was not inclined to contest the matter. That was why she remained *ex parte* and suffered an *ex parte* decree. He also stated that petitioner had not assigned any reason for condonation of delay of (712) days in filing the petition to set aside the *ex parte* decree.

6. By order dt.30.08.2010, the Court below allowed I.A.No.52 of 2005 and condoned the delay of (712) days in filing application to set aside the *ex parte* decree. It recorded the contentions of respondent that she was living with petitioner; that petitioner made a promise to her and to the village elders that he would withdraw the O.P., apart from a promise on the same lines to the Station House Officer, Kedaripuram; and that she was confined in the house of petitioner and did know about the fraud played by petitioner. The Court below therefore felt that an opportunity needs to be given to respondent to contest the O.P. filed against her by petitioner.

7. Although the counsel for petitioner sought to contend that the delay in filing the application seeking setting aside of the *ex parte* decree is enormous, and that no evidence was led in support of the plea of respondent, I am of the opinion that there is no substance in the above contentions. The petitioner did not deny that the address shown in the cause-title in the O.P. as that of the respondent showed she was resident of Berhampur. He

also did not produce any evidence to show that respondent was not residing at Kedaripuram Village.

8. The respondent being an innocent lady living with petitioner obviously could not have imagined that petitioner would continue the O.P. having promised that he would withdraw it.

9. Therefore, I do not find any error of jurisdiction in the order passed by the Court below condoning the delay of (712) days in filing the application to set aside the *ex parte* decree dt.19.08.2003 passed against the respondent and permitting her to file a counter in the O.P. and contest it. Therefore, the Civil Revision Petition is dismissed. No order as to costs.

10. Since the O.P. is of the year 2001, the Court below is directed to dispose of the same as expeditiously as possible preferably within a period of six (06) months from the date of receipt of a copy of the order.

11. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-02-2016

Ndr/*