

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017
CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

Crl.R.C.No.1232 of 2017 and
Crl.M.P.No.11815 of 2017

1. Deejay Dayal
2. Geetha Gopal

... Petitioners

Vs.

Parimala

... Respondent

Prayer:- Criminal Revision Petition has been filed under Section 397 & 401 Cr.P.C., to set aside the order dated 29.08.2017 passed in Crl.M.P.No.8636 of 2017 filed in C.A.S.R.No.9505 of 2017 by the learned Principal Sessions Judge at Chennai filed against the order passed in C.C.No.5216 of 2013 on the file of the learned V Metropolitan Magistrate at Egmore, Chennai.

For Petitioners : Mr.K.S.Kaviarasu

For Respondent : Dr.G.Krishnamurthy

O R D E R

This criminal revision case has been filed against the order dated 29.08.2017 passed in Crl.M.P.No.8636 of 2017 filed in C.A.S.R.No.9505 of 2017 by the learned Principal Sessions Judge at Chennai filed against the order passed in C.C.No.5216 of 2013 on the file of the learned V Metropolitan Magistrate at Egmore, Chennai.

2. The very short facts, which are required to be noticed for the disposal of this criminal revision case are as follows :-

The respondent/wife filed a compliant under Section 13 of Domestic Violence Act for the relief of prohibition against the domestic violence and compensation for the domestic violence inflicted on her and also for maintenance. The said case was taken on file by the learned V Metropolitan Magistrate, Egmore, Chennai-8 in C.C.No.5216 of 2013. In spite of the notice served on the respondents therein, who are the petitioners herein, they did not appear before the said Court, and therefore an ex-parte order was passed by the said Court on 12.05.2016. Though, the petitioners were set ex-parte, the learned Judge has passed the said order in C.C.No.5216 of 2013 on merits, and ultimately, the learned Judge directed the petitioners herein to pay a sum of

Rs.60,000/- as monthly maintenance to the respondent/wife and also directed the petitioners to pay sum of Rs.21,25,000/- as compensation and further directed them to return back the jewels and other articles and cash of Rs.50,000/- to the respondent/wife.

3. Though, such order was passed as early as 12.05.2016, the petitioners herein did not file an appeal immediately within the stipulated time. However, the petitioners herein filed this appeal with condone delay petition in Crl.M.P.No.8638 of 2017 in C.A.SR.No.9505 of 2017 before the learned Principal Sessions Judge, Chennai only on 12.06.2017. In the said condone delay petition, the petitioners had taken a stand that they did not know about the ex-parte order and they came to know the same only on 09.02.2017 and only thereafter, they decided to file appeal and therefore, there was a delay of 93 days and on that ground, they sought for condoning the said delay of 93 days in filing the said appeal.

4. The said petition filed in Crl.M.P.No.8636 of 2017 in C.A.SR.No.9505 of 2017, to condone the delay in filing the appeal was decided on merits and was ultimately dismissed by the appellate Court by the impugned order dated 29.08.2017, against which, the present revision has been filed.

5. I have heard Mr.K.S.Kaviarasu, learned counsel appearing for the petitioners. At the admission stage, Dr.G.Krishnamurthy, learned counsel, appeared for the respondent. I have heard him also. After hearing both sides and with consent of both parties, this revision is taken up for final hearing and disposed of by this Order.

6. Though the learned Judge, who passed the impugned order in rejecting the plea of the petitioners to condone the delay of 93 days by giving certain reasons which may appear to be true, one factor should have appreciated which cannot be lost sight that, the main order before the appellate Court is an ex-parte order, where, the trial Court had given certain directions including a direction to pay compensation of Rs.21,25,000/- and also fixed a quantum of monthly maintenance payable by the petitioners to the respondent/wife.

7. In this regard, the learned counsel appearing for the petitioner would state that if the petitioners would have appeared before the trial Court, this kind of ex-parte order would have not been passed. However, since the first petitioner/husband had been in Mumbai, he could not appear before the trial Court in time. With the result, the said ex-parte order is passed, and if a chance is given to the first petitioner, he would be in a position to assail the decision

taken by the trial Court in giving certain directions to the petitioners to pay very a huge sum under various heads, to the respondent/wife as it may not be justifiable.

8. In this regard, Dr.G.Krishnamurthy, learned counsel appearing for the respondent would state that though the petitioners had the knowledge about the conduct of the proceedings before the trial Court as they have been served notice, they have not appeared before the trial Court for the reasons best known to them. Even after the said order, though being an ex-parte order, it had been passed on merits and set of directions have been issued by the trial Court, the petitioners had not immediately filed any appeal. Even according to the petitioners though they had the knowledge about the passing of ex-parte order on 09.02.2017 itself, they had not immediately chosen to file this appeal within a limited period. They had chosen to file the appeal only after four months and absolutely, there is no reason given by the petitioners for such delay, even after they came to know about the order passed against them on 09.02.2017, as admitted by them. Only this has been considered by the appellate Court, and it rightly dismissed the condone delay petition, through the impugned order. Therefore the same need not be interfered with.

9. I have heard the submissions made by both the learned counsel.

10. No doubt, the order passed by the trial Court is an ex-parte order, whatever be the reasons for non-appearance on the part of the petitioners, who are respondents in that proceedings before the trial Court, the same may not be automatically condoned. Even before the appellate Court, admittedly, the petitioners, though had a knowledge about the passing of ex-parte order in February, 2017 they have not immediately, approached the appellate Court to file appeal, but belatedly after four months, the present appeal was filed with the condone delay petition. Even for such delay, no acceptable reason seems to have been given by the petitioners. This attitude on the part of the petitioners cannot be appreciated and therefore in order to substantiate the justification for both parties, while giving a chance to the petitioners to agitate the issue on merits before the trial Court, this Court cannot loose sight of the fact that the respondent/wife has been pleaded for the past more than four years with out getting any penny from the petitioners, especially the first petitioner, who is the husband. Therefore, by disposing the criminal revision case, this Court feels that justice would be met only if some conditions are imposed.

11. In the result the following order is passed in this

criminal revision case :- The impugned order is set aside. The matter is remitted back to the Court below with the direction to take up the appeal filed by the petitioners herein and decide the same on merits and in accordance with law within a period of two months from the date of the receipt of a copy of this order. In the mean while, the petitioners especially, the first petitioner shall pay a sum of Rs.10,00,000/- (Rupees ten lakhs only) to the respondent/wife within a period of eight weeks from the date of receipt of a copy of this order as an interim bulk compensation. This amount of Rs.10,00,000/- is quantified by this Court, by taking into account the arrears of maintenance which is due from August, 2013, the date on which the original complaint under Domestic Violence Act was filed. Also the petitioners shall continue to pay a sum of Rs.30,000/- per month as current maintenance to the respondent/wife till the disposal of the case before the Court below. Such current maintenance shall be paid on or before 10th of every succeeding English calendar month till the case is finally disposed of by the Courts below.

12. With these directions, the criminal revision case is ordered on the terms indicated above. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rts
To

1. The Presiding Officer,
The Principal Sessions Judge,
Chennai.
2. The Presiding Officer,
The V Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.K.S.Kaviarasu, Advocate, S.R.No.67806
+2cc to Mr.B.Solomon Peter, Advocate, S.R.No.68081

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CS/27/10/17