

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) Nos.1609 and 1610 of 2017
and CMP.Nos.7612 & 7613 of 2017

M.Ramalakshmi ... Petitioner in both CRPs

Vs.

1.A.Maharajan

2.Lakshmi .P.

.. Respondents in both CRPs

Prayer in CRP.(PD) No.1609 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the docket order dated 15.12.2016 passed by the learned I Additional Judge, Family Court at Chennai, made in I.A.No.2150 of 2012 in O.P.No.956 of 2007 by condoning the delay of 1797 days to file an application to set aside the ex-parte order dated 07.11.2007 in O.P.No.956 of 2007.

Prayer in CRP.(PD) No.1610 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the docket order dated 31.01.2017 passed by the learned I Additional Judge, Family Court at Chennai, made in I.A.No.2995 of 2014 in O.P.No.956 of 2007 by allowing the application to set aside the ex-parte order dated 07.11.2007 in O.P.No.956 of 2007.

For Petitioner : Mr.Ralph V.Manohar

O R D E R

Since the issues involved in these revision petitions are one and the same, both are taken up together and a common order is passed.

2. The petitioner, who has filed these civil revision petitions is a third party to the proceedings in F.C.O.P.No.956 of 2007 on the file of the I Additional Judge, Family Court, Chennai, filed by the first respondent for divorce against the second respondent. The second respondent filed applications in (i) I.A.No.2150 of 2012 against the first respondent to condone the delay of 1797 days in filing the application to set aside the ex-parte decree dated 7.11.2007 and (ii) I.A.No.2995 of 2014 to set aside the ex-parte decree dated 07.11.2007 against the first respondent.

3. According to the petitioner, the first respondent obtained a decree of divorce dated 07.11.2007 against the second respondent in F.C.O.P.No.956 of 2007 before the I Additional Judge, Family Court, Chennai. After such decree, the first respondent married the petitioner on 25.02.2008. In the wedlock between the petitioner and first respondent, two children were born. While so, the second respondent has filed two applications, one in I.A.No.2150 of 2012 to condone the delay of 1797 days to file an application to set aside the ex-parte order passed in F.C.O.P.No.956 of 2007 and the other in I.A.No.2995 of 2014 to set aside the ex-parte order dated 04.11.2007 in F.C.O.P.No.956 of 2007.

4. The petitioner filed two applications for impleading herself as a party to I.A.No.2150 of 2012 and I.A.No.2995 of 2014 on the ground that the first respondent married the petitioner after decree of divorce and her interest and interest of two children born in the wedlock are involved and their right will be affected, if applications are heard and decided in her absence.

5. It is submitted that the children that were born to the first respondent and second respondent were also under the care and custody of the petitioner herein. Their matrimonial life was smooth and cordial. It is stated that in due course of time, the first respondent had developed illicit relationship with the second respondent, due to which, the petitioner and her two children were totally abandoned by the first respondent and was now under the care and custody of the petitioner's mother and no maintenance was paid to them. The first respondent then filed a petition in H.M.O.P.No.323 of 2012 before the Sub Court, Tuticorin for divorce against the petitioner, and a legal notice was issued to her, in which it is stated that the settlement deed executed by the first respondent in favour of the petitioner was cancelled. Aggrieved by the same, the petitioner has filed a suit and the same is pending.

In addition to the divorce petition filed by the first respondent, he also filed a petition in G.W.O.P.No.10 of 2013, alleging that he has lawfully rejoined with the second respondent and the ex-parte decree passed in HMOP.No.956 of 2007 was set aside. It is submitted by the petitioner that on verification of case bundles in the trial Court, she came to know that the ex-parte order was not set aside. However, the first respondent in collusion with the second respondent, suppressing the marriage of the petitioner with the first respondent, approached the trial Court to set aside the exparte order.

6. In the said circumstances, the petitioner has filed two applications on 07.11.2014 and 27.01.2016 to implead herself as a party in both the aforesaid applications, in order to prove her case. It is also contended by the petitioner that the interest of her two children will be vitally affected if the applications filed by the second petitioner is heard and decided in her absence. The learned Judge returned the applications filed by the petitioner, raising the query of maintainability and allowed the applications in I.A.No.2150 of 2015 and I.A.No.2995 of 2014 filed by the second respondent.

7. Challenging the said orders dated 15.12.2016 and 31.01.2017, passed by the learned I Additional Judge, Family Court, Chennai, the petitioner has filed the present Civil Revision Petitions.

8. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

9. Though notice has been served on the respondents and their names being printed in the cause-list, there is no representation for the respondents either in person or through counsel.

10. From the records, it is seen that the first respondent married the petitioner on 25.02.2008, after obtaining a decree of divorce in F.C.O.P.No.956 of 2007 against the second respondent. According to the petitioner, now the first respondent is colluding with the second respondent. The first respondent is not contesting the proceedings filed by the second respondent, owing to which, the rights of the petitioner and two children would be adversely

affected.

11. In view of the undisputed averments made by the petitioner, both the orders dated 15.12.2016 and 31.01.2017 passed by the learned I Additional Judge, Family Court, Chennai in I.A.No.2150 of 2012 and I.A.No. 2995 of 2014 are set aside. The petitioner is directed to re-present the applications before the I Additional Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order and on receipt of such application, the trial Court is directed to number both the applications filed by the petitioner, if it is otherwise in order without raising the issue of maintainability. The learned I Additional Judge, Family Court, Chennai is directed to consider the said applications filed by the petitioner seeking impleadment and pass orders on merits and in accordance with law.

12. With the above direction, these Civil Revision Petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

16.06.2017

Speaking Order : Yes / No
Index : Yes/No
Internet : Yes /No

To :

The I Additional Family Court
Chennai.

V.M.VELUMANI, J

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<http://www.judis.nic.in>