

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NO.3170 OF 2017
AND CMP NO.14844 OF 2017

Rajeswari

... Petitioner

Vs.

Mohan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 22.05.2017 made in I.A.No.459 of 2015 in M.O.P.No.88 of 2014 on the file of Family Court at Pondicherry.

For Petitioner : Ms.P.V.Rajeswari

For Respondent : Mr.C.A.Diwakar

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ORDER

This Civil Revision Petition is directed against the order allowing the condone delay application in filing the petition to set aside the *exparte* decree in a matrimonial dispute.

dissolution of marriage on 26.03.2014. Both the parties to the petitioner are employed and have three adult female children, but, are living separately. All the three children are living with the mother. When the matter was posted for filing counter on 03.12.2014, the respondent failed to file counter and was set ex parte on 16.04.2015. After evidence and marking of documents, the trial Court passed a decree of divorce on 13.05.2015. Thereafter, the respondent filed a petition to set aside the ex parte decree with a delay of 18 days, which was condoned by the Family Court, giving liberal interpretation, so as to advance substantial justice. Aggrieved over the said order, the revision petitioner is before this Court.

3. The reason stated in the petition to condone the delay was that the respondent suffered jaundice and took native treatment at Thirumoolar Yoga and Siddha Maruthuvam Kudil and due to unavoidable circumstances, he could not appear before the Court. This was stiffly opposed by the revision petitioner, as the respondent is deliberately indulged in delaying the proceeding by dilatory tactics. The reason for delay is not specified, but an omnibus averment was made as taking shelter under native treatment. The respondent would contend that the length of delay is no matter, but acceptability of the explanation is the only criterion. However, considering the preservation of matrimonial

relation, the Family Court has condoned the delay.

4. When the matter was taken up for hearing, this Court also was of the view that it is was a fit case for mediation. Both the counsels have expressed their willingness to hold a mediation in the Chambers in the presence of all the parties are concerned. On 12.09.2017 mediation was held and the parties have negotiated for a resolution. But the attempt was failed. Therefore, the matter was again posted for hearing on 19.09.2017. On such date, the learned counsel for the respondent has stated that he is withdrawing his appearance in view of the instructions given by his client namely, the respondent. Therefore, the name of the respondent was printed and notice was ordered to him to appear directly. The petitioner has taken notice and the respondent appeared for hearing before this Court. With this background, the parties are heard and the matter is decided on merits.

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5. It is well settled that the expression "sufficient cause" is to receive liberal concession so as to advance substantial justice. The number of test in this case is very less. It is only 18 days delay in filing the petition. But looking through the entire matter, it has to be seen whether the sufficient cause has been made out by the respondent / husband for

condoning the delay, has to be ascertained. In that view of the matter, it is necessary to see the status of the husband. The husband is a responsible employee in the Government of Puducherry. He is aware of all the procedures of conducting a litigation. The contention of the petitioner is that he has deliberately avoided to file counter and allowed the Court to set him *exparte* and filed the petition to set aside the *exparte* decree after a period of 18 days.

6. In the enquiry conducted in the interlocutory application in I.A.No.459 of 2015, the petitioner had examined herself and also examined R.W.2, a Government official, by summoning him as a witness. R.W.2 marked Ex.X-1, authorisation letter, and Ex.X-2 attendance register and Ex.X-3, earned leave details, and deposed that the respondent had not availed any leave between April,2015 and June,2015. He has availed compensatory leave between 15.06.2015 and 17.06.2015. After that, he has not taken any leave. But, during cross-examination, R.W.2 would state that the respondent had not taken any leave during April,2015, but contradicted the statement by stating that he had availed earned leave between 11.03.2015 and 20.03.2015. A perusal of Ex.X-3, E.L.Register, does not disclose any leave between 16.04.2015 and 26.06.2015. It also shows that the respondent has 286 days of earned leave to his credit and

the staff attendance register discloses that the respondent has not availed any leave in the months of April, May, and June, 2005. Therefore, the averments made in the affidavit filed in support of the condone delay petition are absolutely false and the exhibits marked as Exs.X-2 and X-3 clearly go to show that the respondent was attending to work throughout and has come before this Court with unclean hands. The delay sought be condoned may be very little. Length of delay is no matter, but acceptability of the explanation is the only criterion.

7. In the instant case, the respondent has come out with false reasons and sworn to the affidavit with false details. Those who plead equity should do equity. In this case, the respondent has come before this Court with unclean hands and, therefore, he does not deserve for any equitable treatment.

8. It is a calculated move and the reasons adduced will not disclose the sufficient cause and the reason for the delay was also not explained properly. In any event condoning the delay will not advance any substantial justice. This contention has some force. The attitude of the respondent shows that he has been delaying the matter with deliberate intentions to cause harassment to the petitioner. Even assuming that the delay is condoned and the matter is decided on merits, it is not going to advance substantial justice and ultimate result is going to be same, as the

parties are so much firm and determined. This Court would not hesitate to condone the delay in normal circumstances. But the three adult female children of the parties are so definite that they do not want to live with their father as he has caused so much cruelty to their mother and acted in a way unbecoming a father. The respondent/husband has also laid conditions for taking care of the three female children. A dutiful father is expected to shower unconditional affection on his children. He cannot bargain like a businessman for something in return, even love and affection, for helping them in life. Since the children have already disowned the relationship he attempted to bequeath the properties in favour of his brother's children. The conduct of the parties shows that there is no scope for settlement.

9. Viewing from any angle, this Court is of the firm opinion that substantial justice will be achieved only by allowing the Civil Revision Petition. Even though in a Civil Revision Petition under Article 227 of the Constitution of India, the Court cannot go into the factual matrix, the dispute is in a matrimonial matter and in order to give complete justice, this Court has gone into the root of the matter and decided the issue.

10. For the foregoing findings, this Court finds it as a fit case

for allowing the Civil Revision Petition. Accordingly, the order dated <http://www.judis.nic.in>

22.05.2017 passed in I.A.No.459 of 2015 in M.O.P.No.88 of 2014 by the learned Judge, Family Court, Pondicherry, is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

21.11.2017

Index : Yes/No

Internet : Yes/No

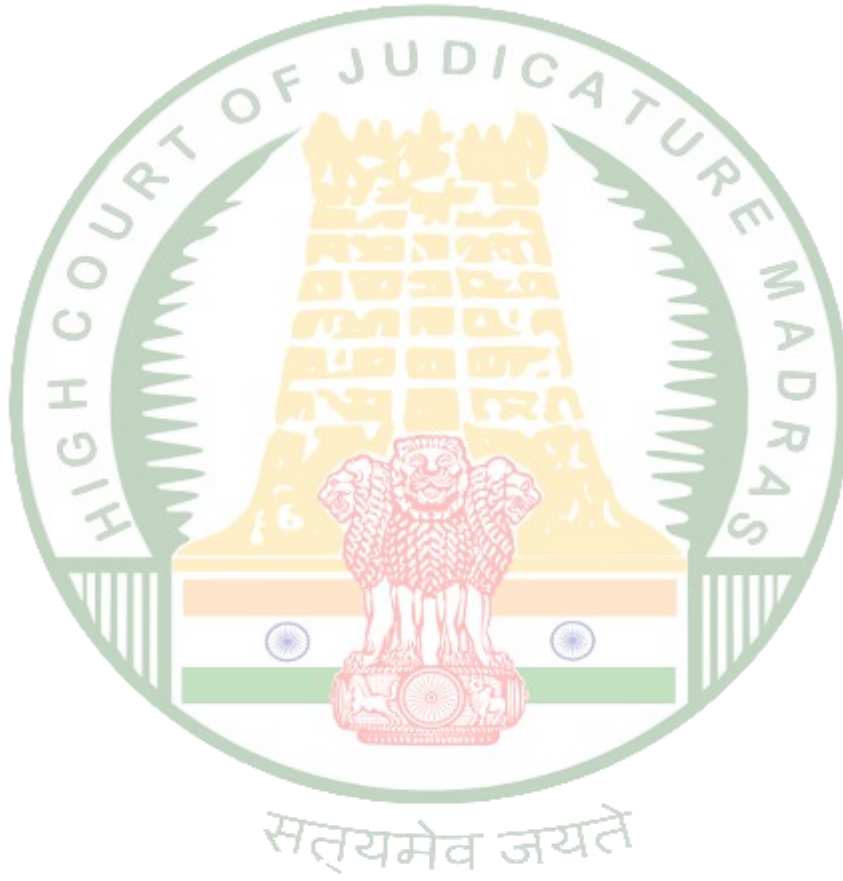
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To

The Family Court
Pondicherry.



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M.GOVINDARAJ, J.

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