

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.322 of 2017
and
C.M.P.No.1446 of 2017

H.Sakila Banu

.. Petitioner

Vs.

1. S.Harikrishnan

2. T.N.Sivakumar

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 29.09.2016 passed in I.A.No.73 of 2016 in S.M.O.P.No.2 of 2014 on the file of the Family Court, Erode, Erode District.

For petitioner : Mr.I.C.Vasudevan

ORDER

The revision is directed against the order condoning the delay of 423 days in filing petition to restore S.M.O.P.No.2 of 2014 in a matrimonial dispute.

2. The husband has filed the above S.M.O.P. for divorce under

Section 27(i)(a),(b) and (d) of the Special Marriage Act. The first respondent-husband has stated in his affidavit before the Court that he was prevented from filing proof affidavit by the wife through henchmen. Thereafter, it is stated that the husband was suffering from Jaundice and was taking native treatment, and hence, he could not appear before the Court, by which time the delay has crept in.

3. The application was resisted by the wife contending that the husband was employed outside India and she has also filed I.A. for maintenance, in which there was a direction to the husband to pay Rs.10,000/- p.m., which has not been paid till today.

4. Based on the above averments and after hearing both parties, the trial Court has condoned the delay exercising its discretion, however on condition that the husband has to pay Rs.1 lakh, which is the arrears of maintenance that has been ordered earlier. The said amount of Rs.1 lakh was ordered to be deposited within a period from one month, failing which the delay petition would stand automatically dismissed.

5. It is stated by the petitioner/wife that the said conditional order has not been complied with. Now, the wife, who is the revision petitioner herein, is challenging the condonation of delay. Though maintenance petition was ordered on 05.09.2014, the wife has not been receiving any amount and subsequently, on 15.10.2014, the main O.P. itself was dismissed. The

learned trial Judge felt that recovery of Rs.1 lakh which is a portion of the arrears of maintenance, can be made as a condition for condoning the delay. The respondent-husband has also complied with the same. As the learned trial Judge has exercised discretion and condoned the delay, I do not see any reason to interfere with the impugned order. Hence, the Civil Revision Petition is dismissed. Considering the fact that the main O.P. in S.M.O.P.No.2 of 2014 has been pending from 2014, the trial Court is directed to dispose of the said O.P. before 31.07.2017. No costs. C.M.P. is closed.

07.02.2017

CS

Copy to

The Judge,
Family Court, Erode.

PUSHPA SATHYANARAYANA, J

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