

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2017

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(NPD).No.2637 of 2011

Sumathi .. Petitioner

Vs.

K.N.Krishna Rao .. Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.07.2009 made in I.A.No.48 of 2007 in H.M.O.P.No.12 of 2001 on the file of the Sub-Court, Hosur, Krishnagiri District.

For Petitioner : Mrs.Valliammal for
Mr.M.Christopher

For Respondent : No Appearance

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ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 08.07.2009 made in I.A.No.48 of 2007 in H.M.O.P.No.12 of 2001 on the file of the Sub-Court, Hosur, Krishnagiri District.

2. The petitioner is wife and respondent is husband. The respondent filed H.M.O.P.No.12 of 2001 on the file of the Subordinate Court, Hosur, for divorce on the ground of cruelty. The petitioner entered appearance through advocate, but subsequently, she did not contest. An ex parte decree was passed on 20.12.2002. The petitioner filed I.A.No.48 of 2007 to condone the delay of 1602 days in filing the application to set aside the ex parte decree passed in the above H.M.O.P.

3. According to the petitioner, she has shifted her residence from Madurai to Salem and therefore, she did not get any information from her advocate. She came to know the ex parte decree only when the respondent filed counter in M.C.No.25 of 2007 filed by the petitioner for maintenance in the Family Court, Salem. She immediately contacted her advocate and filed the petition to condone the delay in filing the application to set aside the ex parte decree. She also stated that she was not well and therefore she could not appear on the date of hearing.

4. The respondent filed counter affidavit and denied all the averments made in the application and submitted that the petitioner was aware of the proceedings, she was only in Madurai and she did not shift her residence to Salem. The petitioner was informed about

the exparte decree passed in H.M.O.P. over phone through friends and relatives and only to harass the respondent, the petitioner has come out with the present application to condone the delay in filing petition to set aside the exparte decree. He also stated that the petitioner has not stated any valid reason for the huge delay.

5. Before the learned Judge, the petitioner examined herself as P.W.1 and no document was marked. The respondent did not let in oral and documentary evidence.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and oral evidence of the petitioner, dismissed the application holding that the petitioner has not proved that she has shifted her residence from Madurai to Salem, during her cross-examination, she admitted that her children were studying in a school at Madurai till 2006 and the reasons given by the petitioner are unbelievable and respondent also got married again.

7. Heard the learned counsel for the petitioner and perused the materials available on record. No representation on behalf of the respondent.

8. From the materials available on record, it is seen that the petitioner has stated that she could not appear and contest the

case, as she has shifted her residence from Madurai to Salem, she did not get any information from the advocate for the date of hearing. During her cross-examination, the petitioner admitted that her children were studying in a school at Madurai till 2006 and respondent married again.

9. The learned Judge considering all the above facts, evidence of P.W.1 and admission of the petitioner that the respondent has married again, dismissed the application by giving cogent and valid reason. There is no irregularity or illegality in the order of the learned Judge dated 08.07.2009 warranting interference by this Court.

10. In the result, the Civil Revision Petition is dismissed. No costs.

18.08.2017

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To

The Subordinate Judge, Hosur, Krishnagiri District.

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V.M.VELUMANI,J.

Kj



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