

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.563 of 2015
& M.P.No.1 of 2015

S.Neelavathi

.. Petitioner

Vs.

1.B.Selvam

2.The Collector,
North Arcot District,
Thiruvannamalai.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 16.04.2013 made in I.A.No.1793 of 2011 in P.O.P.No.661 of 2001 on the file of the II nd Additional Family Court at Chennai.

For Petitioner : Mr.C.V.Kumar

For R1 : Mr.V.R.Appa Swamee

For R2 : No appearance

ORDER

This Civil Revision Petition is filed to set aside the order dated 16.04.2013 made in I.A.No.1793 of 2011 in P.O.P.No.661 of 2001 on the file of the II nd Additional Family Court at Chennai.

2.The petitioner filed P.O.P.No.661 of 2001 for permission to institute the suit in *in forma pauperis* as an indigent person, for a direction to the respondents to return the articles namely 20 sovereigns of gold ornaments and utensils and furnitures to the petitioner or in the alternative to pay the sum of Rs.60,000/- being the value of gold articles and Rs.15,000/- being the value of household utensils and furnitures to the petitioner.

3.The respondents filed counter statement on 10.05.2002 in the O.P and was contesting the said O.P. The said O.P was dismissed on 04.08.2003 for default as petitioner did not appear on that day.

4.The petitioner filed I.A.No.1793 of 2011 to condone the delay of 2677 days in filing the petition to restore the O.P. According to the petitioner, her daughter eloped with one male friend and ran away from her house. Due to the said incident, the petitioner became mentally upset and was taking treatment as in-patient for long time.

5.The first respondent filed counter affidavit and denied that petitioner's daughter eloped, but stated that she married in the

presence of elders. The first respondent further contended that petitioner has not given any particulars with regard to her illness and treatment taken by her. She has not given valid reason for condoning the delay of 2677 days and prayed for dismissal of the said application.

6.The learned Judge, considering the averments in the affidavit, counter affidavit and materials available on record, dismissed the application.

7.Against the said order dated 16.04.2013, made in I.A.No.1793 of 2011 in P.O.P.No.661 of 2001, the present Civil Revision Petition is filed by the petitioner.

8.The learned counsel for the petitioner and the first respondent reiterated the averments in the affidavit, counter affidavit and contentions raised in the ground. In support of his contentions, the counsel for the first respondent relied on the judgment reported in **2005(3) CTC 638 (Yanaimal Thottam Trust Rep. By its ... Vs. B.Lakshmanan and B.Jayaraman)** and submitted that already after dismissal of the O.P, both the petitioner and first respondent have settled the matter amicably and filed

F.M.O.P.No.1846 of 2005 under Section 13(B) of the Hindu Marriage Act for dissolution of marriage and submitted that both the petitioner and first respondent have agreed that they will not make any claim including maintenance against others in future and the same was recorded in the order passed in the F.M.O.P as follows:

"5.Both the petitioners have agreed that they will not make any claim including maintenance against one another in future as the First petitioner has paid a sum of Rs.65,000/- (Rupees Sixty Five thousand only) to the second petitioner towards her claim of lifetime alimony and the same has been deposited in the Family Court, Chennai-104 and the first petitioner has no objection to receive the same from the office by filing suitable application..."

9.Heard the learned counsel for the petitioner as well as first respondent and perused the materials available on record.

10.From the materials available on record, it is seen that the petitioner has not given any reason for the delay in filing the application to restore the suit and has not substantiated that her daughter eloped with male friend and due to that the petitioner became mentally ill and was taking treatment for long time. The petitioner has not produced any document to substantiate her claim.

The petitioner has not denied the contention of the first respondent that her daughter got married in the presence of elders. Further the counsel for the petitioner has not denied that both the petitioner and first respondent have settled the matter amicably and filed F.M.O.P.No.1846 of 2005 under Section 13(B) of the Hindu Marriage Act for dissolution of marriage.

11.It is well settled law that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the party has given acceptable and valid reason and the intention of the party is bonafide and not malafide. The party should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits. In the present case, the petitioner suppressed the fact that after dismissal of P.O.P.No.661 of 2001, divorce was granted and a sum of Rs.65,000/- has been deposited into the Court for her permanent alimony and that parties have no claim against each other. In view of the well settled principle and the fact that the petitioner has not given any valid reason to condone the huge delay of 2677 days, there is no irregularity or illegality in the order passed by the learned trial Judge warranting interference by this Court.

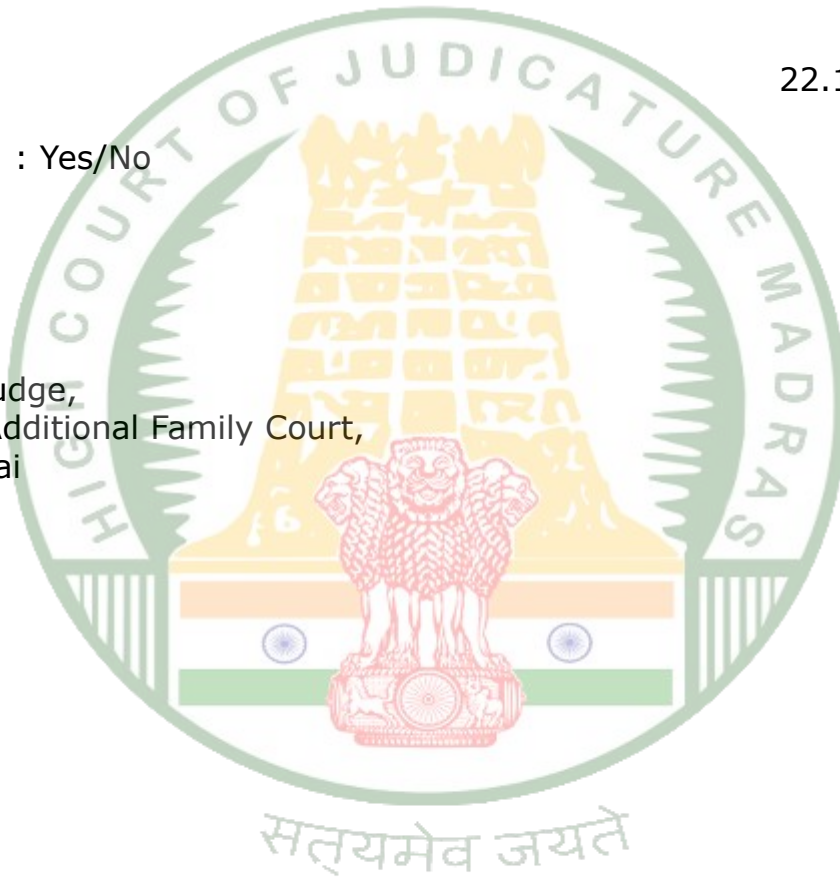
12.In the result, this Civil Revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.12.2017

Internet: : Yes/No
gsa

To

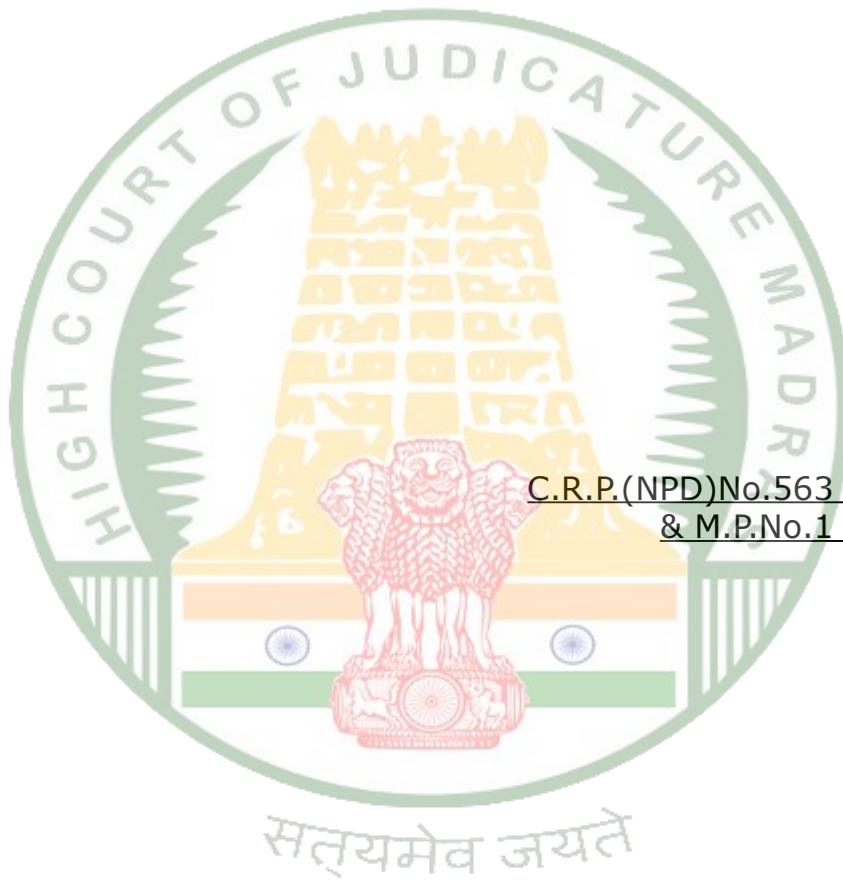
The Judge,
II nd Additional Family Court,
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V.M.VELUMANI,J.

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