

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2890 of 2009

P.Selvi

...

Petitioner

Vs

Karunamurthy

...

Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.11.2008 made in I.A.No.20 of 2007 in HMOP No.3 of 2003 on the file of the Sub Court, Arnai, Tiruvannamalai District.

For Petitioner : Mr.S.Gunaseelan

For Respondent : Mr.P.Haribabu

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 29.11.2008 made in I.A.No.20 of 2007 in HMOP No.3 of 2003 on the file of the Sub Court, Arnai, Tiruvannamalai District.

2. The petitioner is the respondent and the respondent is the petitioner in HMOP No.3 of 2003 on the file of Sub Court, Arani. The respondent filed the above HMOP against the petitioner for divorce on the ground of cruelty. The petitioner did not appear in the said HMOP and therefore she was set exparte and exparte decree was passed on 30.04.2003. The petitioner filed I.A.No.20 of 2007 to condone the delay of 1246 days in filing the application to set aside the exparte decree dated 30.04.2003.

3. According to the petitioner, no notice was served on her from the court with regard to the above HMOP filed by the respondent. The petitioner came to know about passing of exparte decree only from the counter filed by the respondent in O.S.No.147 of 2006 filed by the petitioner on the file of District Munsif Court, Polur claiming maintenance. Immediately on coming to know about passing of exparte order, the petitioner filed Interlocutory Application to condone the delay in filing the petition to set aside the exparte order. The respondent filed counter and denied all the averments and submitted that court notice was served on the petitioner but she did not appear and only after service of notice on the petitioner, she was set exparte and an exparte order was passed.

4. It is not correct to state that she came to know about the exparte order only from the counter filed by the respondent in O.S.No.147 of 2006 filed by the petitioner claiming maintenance. The respondent married one Gowri on 17.03.2006 and on coming to know the same, only to harass the respondent, the petitioner has filed O.S.No.147 of 2006 claiming maintenance and filed present petition to condone the delay of 1246 days in filing petition to set aside the exparte order. The reason given by the petitioner for condoning the delay is not valid and prayed for dismissal of the Interlocutory Application. Before the Tribunal, the petitioner examined herself as PW1. No documents were marked on her behalf. The respondent examined himself as RW1 and court notice was marked as Ex.C1. The learned Judge, considering the averments in the affidavit, counter affidavit, oral and documentary evidence and the documents filed by the parties and Ex.C1, dismissed the application.

5. Against the order of dismissal dated 29.11.2008 made in I.A.No.20 of 2007 in HMOP No.3 of 2003, the present Civil Revision Petition has been filed.

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

7. An exparte order was passed against the petitioner on 30.04.2003. The petitioner filed I.A.No.20 of 2007 for condoning the delay of 1246 days in filing the petition to set aside the exparte order stating that notice in HMOP was not served on her. On the contrary, during enquiry and evidence let in by the parties, court notice served on the petitioner in the presence of witnesses was marked as Ex.C1. From Ex.C1, it is clear that the court notice was served on the petitioner and she suppressed the same and has come out with a false case that no court notice was served on her. The contention of the respondent that after three years of decree of divorce, he married one Gowri on 21.03.2006, the petitioner has filed the application to condone the delay in filing the petition to set aside the exparte order only to harass the respondent has considerable force. The learned Judge has considered all the above facts and dismissed the application by giving cogent and valid reasons. There is no irregularity or illegality in the order passed by the learned Judge warranting interference by this Court.

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

08.08.2017

Index : Yes/No
rgr

To

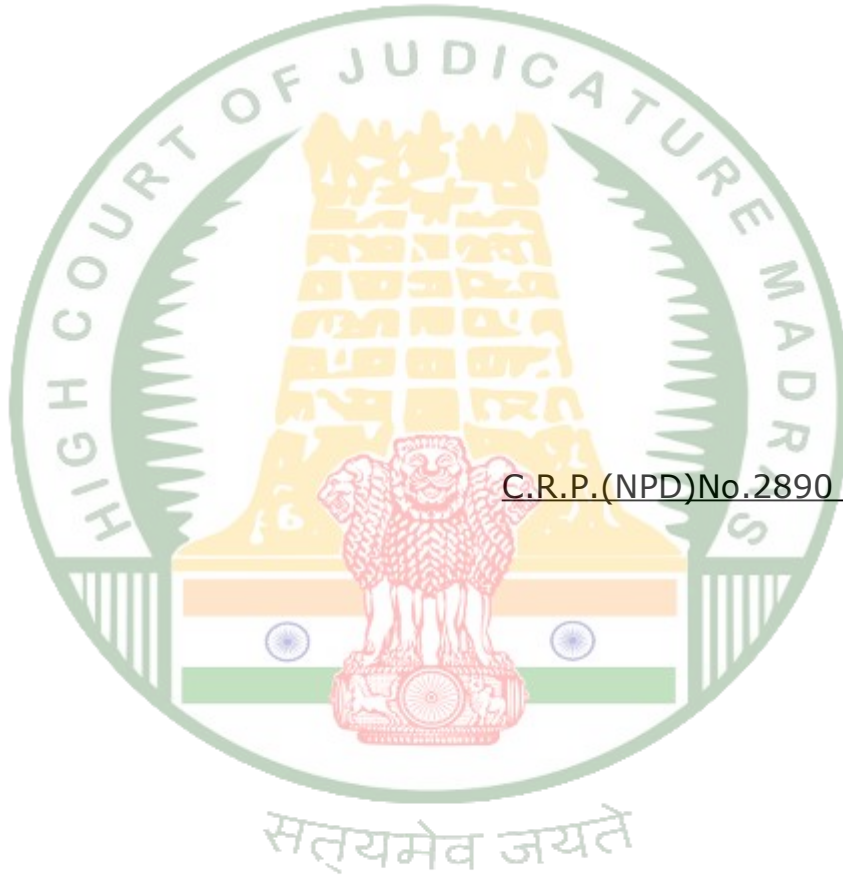
The Subordinate Judge,
Arani,
Tiruvannamalai District.



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V.M.VELUMANI, J.

rgr



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