

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(NPD)No.3207 of 2007
& M.P.No.1 of 2007

Subramaniam .. Petitioner

Vs.

Banumathi .. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the fair and decretal order dated 01.12.2006 made in I.A.No.56 of 2006 in I.A.No.51 of 2005 in H.M.O.P.No.21 of 2004 on the file of the Sub Court, Dharapuram.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.C.E.Pratap

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 01.12.2006 made in I.A.No.56 of 2006 in I.A.No.51 of 2005 in H.M.O.P.No.21 of 2004 on the file of the Sub Court, Dharapuram.

2. The petitioner is husband, respondent is the wife. The petitioner filed H.M.O.P.No.21 of 2004 on the file of the Subordinate Court, Dharapuram for divorce. The respondent did not appear and contest the H.M.O.P. An ex parte decree was passed on 30.11.2004. The respondent filed I.A.No.51 of 2005 to condone the delay of 97 days in filing the petition to set aside the ex parte decree. The said I.A was dismissed for default on 06.03.06. Subsequently, the respondent filed I.A.No.56 of 2006 to condone the delay of 135 days in filing the petition to restore the I.A.No.51 of 2005. The said application was allowed on 01.12.2006. According to the respondent, she was suffering from severe Jaundice and was bedridden and in the mean time, her brother died. Hence, she could not contact her Advocate and conduct the case. When she recovered from illness, she found that I.A filed to condone the delay of 97 days in filing the petition to set aside ex parte decree was dismissed. Immediately she filed I.A.No.56 of 2006.

3. The petitioner filed counter affidavit and denied all the averments and submitted that she has not given any valid reason and she has not stated when she recovered from the illness and

prayed for dismissal of the application. The learned Judge, considering the reason given by the petitioner, allowed the application.

4. Against the said order dated 01.12.2006 made in I.A.No.56 of 2006 in I.A.No.51 of 2005 in H.M.O.P.No.21 of 2004, the present civil revision petition is filed by the petitioner.

5. The learned counsel appearing for the petitioner submitted that respondent has not produced any material to show that she was suffering from Jaundice and her brother died, due to that she could not appear and contest the case. The learned Judge, failed to consider that the respondent did not substantiate the reason given by her to condone the delay by any acceptable evidence and the learned counsel appearing for the petitioner further submitted that the petitioner remarried on 02.06.2006 and only to harass the petitioner, the respondent has come out with the present petition.

6. The learned counsel appearing for the respondent submitted that the respondent was suffering from Jaundice and in the mean time, her brother died and hence she could not file any

application to set aside the exparte decree and the respondent has given valid reason to substantiate the delay. The learned Judge, considering the reason given by the respondent, allowed the application and prayed for dismissal of the civil revision petition.

7. Heard the learned counsel appearing for the petitioner and respondent and perused the materials available on record.

8. From the materials on record, it is seen that the exparte decree was passed against the respondent on 30.11.2004. The respondent did not file any application to set aside the exparte decree within time limit. She filed I.A.No.51 of 2005 to condone the delay of 97 days in filing the application to set aside the exparte decree. The respondent did not prosecute the said application also vigilantly. The said application was dismissed for default on 06.03.2006. The respondent filed I.A.No.56 of 2006 to condone the delay of 135 days in filing the application to restore the application I.A.No.51 of 2005. Respondent has stated that she is suffering from severe Jaundice and her brother died, which caused delay. The respondent has not examined herself and has not produced any document to substantiate the above reason. The learned Judge has

erred in allowing the application without their being any material for accepting the reason given by the respondent. Further, the learned counsel for the petitioner submitted that the petitioner got married on 02.06.2006, even before the petitioner filed I.A.No.56 of 2006. In view of these facts, the order of the learned Judge, allowing the I.A.No.56 of 2006 is liable to be set aside.

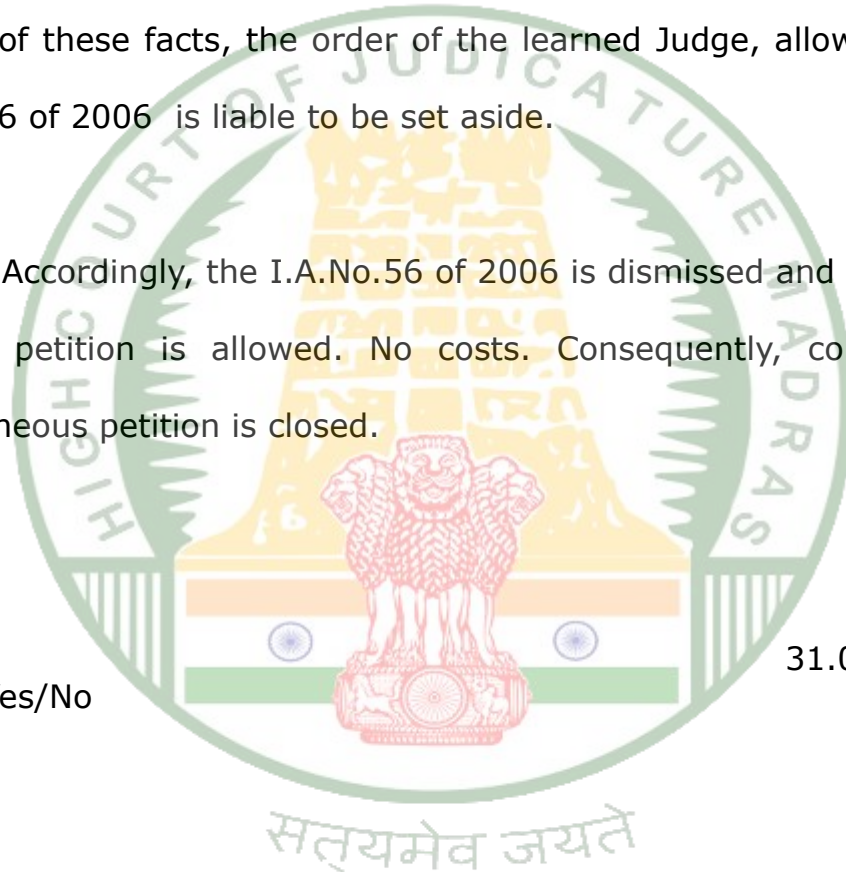
9. Accordingly, the I.A.No.56 of 2006 is dismissed and the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
gsa

To

The Subordinate Judge,
Dharapuram.

31.08.2017



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V.M.VELUMANI,J.

gsa



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