

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2017

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THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD)No.3996 of 2016

O.V.Sivakumar ... Petitioner

vs.

Gomathi ... Respondent

This Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 21.10.2016 passed in F.C.I.A.No.197 of 2016 in H.M.O.P.No.100 of 2014, on the file of the Family Court, Dharmapuri.

For Petitioner : Mr.D.Rameshkumar

For respondent : Mr. D.Sivashanmugam

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ORDER

This Civil Revision Petition arises against the order dated 21.10.2016 passed in F.C.I.A.No.197 of 2016 in

H.M.O.P.No.100 of 2014, on the file of the Family Court, Dharmapuri.

2. Brief facts of the case is as follows :-

The petitioner filed H.M.O.P No.100 of 2014 before the Subordinate Judge, Dharmapuri. The aforesaid HMOP was posted for hearing on 30.10.2015 for compliance of the order passed in I.A. No. 44/2015 towards the expenses of the litigation. On that date, the petitioner was not in a position to appear before the Family Court, since the petitioner was suffering from jaundice, he was unable to comply with the order passed in I.A. No.44/2015. Due to non-compliance of the order, the main HMOP was dismissed, by the Family Court. Therefore, the petitioner filed an application under Order 9 Rule 9 of Code of Civil Procedure, in F.C.I.A. No. 197 of 2016 seeking to condone the delay of 136 days in filing the application to restore the HMOP. The court below dismissed the said application stating that the petitioner ought to have filed an application for enlargement under Section 148 of CPC, seeking extension of time to comply with the order passed in the Interlocutory Application in FCIA No. 197/2016.

According to the learned counsel for the petitioner the court below has erroneously dismissed the application, without stating any other reasons. Against the said dismissal order, the petitioner has filed this revision before this Court.

3. The learned counsel for the respondent submitted that the petitioner has filed the HMOP before the Family Court only with a view to harass the respondent. Therefore, there is no bonafide in the reasons stated in the affidavit, to condone the delay of 136 days, in preferring the application under Order 9 Rule 9 of CPC. Hence, nothing warrants this Court to interfere with the order passed by the Family Court.

4. Heard learned counsel for the petitioner and the learned counsel for the respondent and perused the material available on records.

5. On perusal of the records it is found that the petitioner has filed the HMOP No.100 of 2014 for divorce against the respondent. In the aforesaid petition, I,.A. No. 44/2015 has

been filed for interim maintenance. The said application was allowed and the court below directed the revision petitioner to pay Rs.15,000/- towards the litigation expenses to the respondent. The aforesaid conditional order has not been complied with and so the O.P was posted for hearing on 30.10.2015 and the same was dismissed on that date, for non-compliance of the conditional order. Hence, an application in FCIA No.197 of 2016 was filed by the petitioner to condone the delay of 136 days in filing the petition to set aside the order passed in HMOP No.100/ 2014. According to the petitioner, he was suffering from jaundice and was unable to attend the hearing on 30.10.2015. On that date, the matter was dismissed for non-prosecution. Eventhough the petitioner has stated the reasons in the affidavit, no material has been placed before the court, in support of his contention.

6. Taking into consideration, the liberal approach being followed by this Court, in the light of the judgements in **H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER**, reported in

(2015) 1 SCC 680, and in the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in (2013) 12 SCC 649**, the Hon'ble Supreme Court has observed that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. Hence, this Court feels that the application for condoning the delay of 136 days in filing the restoration petition can be allowed, by imposing heavy cost on the revision petitioner. It is the contention of the learned counsel for the respondent that the respondent has spent huge money for litigation at the hands of the petitioner. At this stage, learned counsel for both the parties represented that the Lower Court may be directed to dispose of the HMOP, within a time frame fixed by this Court.

6. Considering the facts and circumstances of the case and in the light of the decisions cited supra, this Court is inclined to pass the following orders :-

1) The order dated 21.10.2016 passed by the Family Court in FCIA No. 197 of 2016 in I.A. No.44/2015 in the HMOP No.100 of 2014 is set aside and the delay is condoned, on payment of Rs.5000/- to the respondent, within a period of two weeks from the date of receipt of a copy of this order.

2) In the event of the conditional order being complied with, the Family Court is directed to allow the restoration petition, if it is in order and dispose of the HMOP as expeditiously as possible.

7. The Civil Revision Petition is allowed on the above terms. No costs.

08.06.2017

Index : yes / no

Speaking order/ Non-speaking order

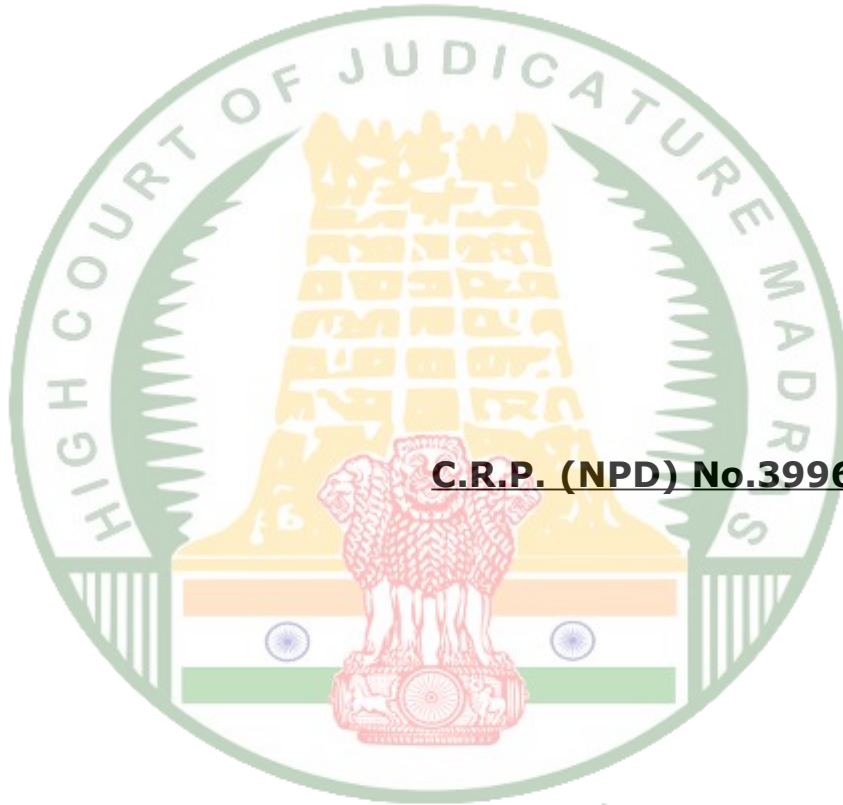
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To

The Family Court,
Dharmapuri.

D.KRISHNAKUMAR, J.

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