

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2821 of 2012

Rajeswari

.. Petitioner

Vs.

Balasubramanian

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 11.11.2011 made in I.A.No.79 of 2010 in H.M.O.P.No.43 of 2007 on the file of the Principal Subordinate Court, Mayiladuthurai.

For Petitioner : Mr.S.Sounthar

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 11.11.2011 made in I.A.No.79 of 2010 in

H.M.O.P.No.43 of 2007 on the file of the Principal Subordinate Court, Mayiladuthurai.

2. The petitioner is the wife and respondent is the husband. The respondent filed H.M.O.P.No.43 of 2007 against the petitioner for divorce on the ground of cruelty, on the file of the Principal Subordinate Court, Mayiladuthurai. The petitioner did not appear and contest the said H.M.O.P. The exparte decree was passed on 08.08.2007. The petitioner filed I.A.No.79 of 2010 to condone the delay of 1069 days in filing the petition to set aside the exparte decree dated 08.08.2007.

3. According to the petitioner, she did not receive any summons from the respondent in that H.M.O.P. She came to know about the ex-parte decree only when the respondent tried to evict the petitioner from the matrimonial home. The respondent also filed O.S.No.223 of 2009 on the file of the Principal District Munsif Court, Mayiladuthurai, for evicting the petitioner. At that time, the petitioner's advocate informed her that after disposal of O.S.No.223 of 2009, she can file an application to set aside the exparte decree dated 08.08.2007. The said suit was dismissed on 13.07.2010.

Immediately, the petitioner filed the present application to condone the delay of 1069 days in filing the petition to set aside the exparte decree.

4. The respondent filed counter affidavit and denied all the averments made by the petitioner in the said application. According to the respondent, only after proper issuance of notice to the petitioner, she was set exparte and exparte decree was passed. It is not correct to state that she did not receive notice from the Court. She admitted that she came to know about the exparte decree during the summons received in O.S.No.223 of 2009. The petitioner has not taken any steps to set aside the exparte decree during that time. The reason given by the petitioner for the delay of 1069 days in filing the petition to set aside the exparte decree is not valid.

5. Before the learned Judge, the petitioner examined herself as P.W.1 and she did not mark any documents. The respondent has not let in any oral evidence, but marked four documents as Exs.B1 to B4.

6. The learned Judge, considering all the averments made in the affidavit, counter affidavit, materials available on record,

documents and admission of the petitioner that her signature in Ex.B3/postal acknowledgement due and Ex.B4 written statement filed in O.S.No.223 of 2009, dismissed the application holding that the petitioner has not given any valid reason to condone the delay of 1069 days.

7. Against the order of dismissal dated 11.11.2011 made in I.A.No.79 of 2010, the present civil revision petition has been filed by the petitioner/wife.

8. Heard the learned counsel appearing for the petitioner and perused the materials available on record. There is no representation on behalf of the respondent.

9. The learned counsel for the petitioner submitted that the learned Judge has not properly appreciated the reasons given by the petitioner. Especially, the petitioner and respondent are residing in the same address, without sending summons properly, used his influence, the respondent got the exparte decree. The petitioner did not file application to set aside the exparte decree immediately. When she came to know about the exparte decree and when the

respondent tried to evict the petitioner with the help of police during the pendency of the suit filed by the respondent, on the advice of her advocate, the petitioner filed the present application to condone the delay of 1069 days in filing the petition to set aside the exparte decree, after disposal of the suit. These contentions are untenable.

10. The petitioner received notice issued by the respondent before filing of the H.M.O.P. for divorce. In view of the same, the petitioner ought to have been diligent enough to protect her interest. Admittedly, the petitioner did not take any steps to get the exparte decree set aside immediately. The reason given by the petitioner for the huge delay of 1069 days that she did not file the application immediately, on the advice of her advocate, she filed the application after disposal of the suit, is not acceptable. The petitioner even after coming to know about the exparte decree, for more than two years, she has not taken any steps to file the application.

11. It is a well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. The

Courts must see whether the parties given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties 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 reason given by the petitioner is not valid and acceptable.

12. The learned Judge considering all the above facts, dismissed the application by giving cogent and valid reasons. There is no irregularity or illegality warranting interference with the order of the learned trial Judge, dated 11.11.2011.

13. Accordingly, the civil revision petition is dismissed. No costs.

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Index : Yes/No

dm/kj

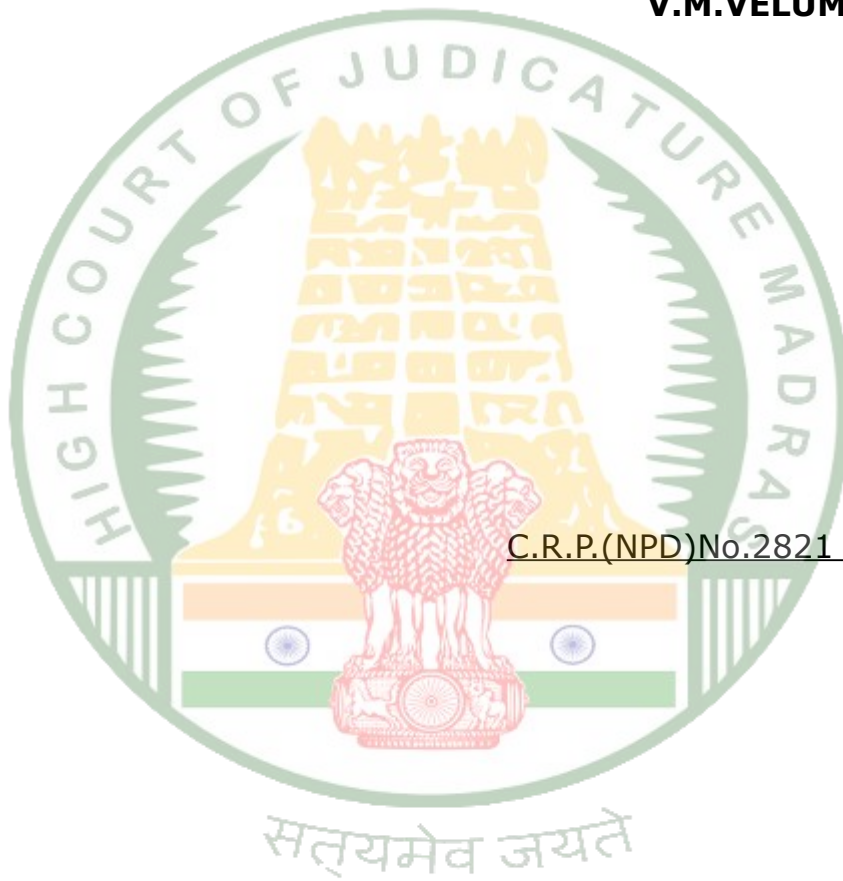
To

The Principal Subordinate Judge
Mayiladuthurai.

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V.M.VELUMANI, J.

dm/kj



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