

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2929 of 2012
and
M.P.No.1 of 2012**

1.R.Shanthi

2.M.Pravin Kumar

3.M.Reshma

.. Petitioners

(Petitioners 2 and 3 are Minors Rep. by their
Mother and next friend R.Shanthi)

Vs.

P.Manoharan

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 21.12.2010 passed by the learned II Additional Family Court, Chennai in I.A.No.2374 of 2007 in O.S.No.61 of 2004.

For Petitioners : M/s.G.Nalini

For Respondent : Mr.M.Udhayakumar

ORDER

The plaintiffs in O.S.No.61 of 2004, on the file of the Family Court, Chennai are the civil revision petitioners before this Court.

2.The plaintiffs filed the suit in O.S.No.61 of 2004 against the respondent/husband of the 1st petitioner for the prayer that (a) to pay past maintenance amount of a sum of Rs.24,000/- to the plaintiffs @ Rs.3,000/- per month (Rs.1,000/- to each plaintiff from the month of August 2003 till March 2004; (b) to pay future maintenance @ Rs.3,000/- per month from the month of April 2004 onwards; (c) to create a charge over the schedule mentioned property in respect of the maintenance amount payable to the plaintiffs; (d) to pay the cost of the suit.

3.Though summons were served on the respondent/defendant, but subsequently, they were not appeared and hence the suit was dismissed for default. Therefore, the petitioners, who are the wife and the children of the respondent in I.A.No.2374 of 2007 were filed the petition for condonation of delay of 1176 days in setting aside the exparte order of the dismissal dated 26.07.2004.

4.It is the case of the petitioners is that the 1st petitioner is the wife and the petitioners 2 and 3 are the children of the respondent. This suit has been filed for maintenance against the respondent. When the said suit was pending for filing of the written statement by the respondent/defendant at that point of time, the respondent/defendant has filed a separate case in O.P.No.1726 of 2003 against the 1st petitioner herein seeking dissolution of their marriage. Therefore, both the matters were pending before the same Court namely the II Additional Family Court, Chennai.

5.While pendency of the above O.P.No.1726 of 2003 filed by the respondent, the petitioners were filed an application under Section 24 of Hindu Marriage Act, for interim maintenance. But, during the month of June 2004, the respondent/husband has informed the 1st petitioner that he is willing to live with the 1st petitioner and children, by promising that he would not consume alcohol in future and not torture the 1st petitioner/wife or their children and by paying the school fees for the children, who are the petitioners 2 and 3 and the respondent willing to run the family smoothly. Therefore, without any other option, the 1st petitioner except to believe the words of the

respondent/husband, the 1st petitioner has not attend the Court proceedings from the subsequent hearing dates. Hence, the petitioners were taken to the matrimonial home by the respondent/husband and was prevented these petitioners from attending the Court in both the cases.

6. After a short period of re-union, a new flat was constructed by the respondent and therefore, all these petitioners were moved to the new flat constructed by the respondent and thereafter the respondent/husband again went back to his old ways of ill-treating and torturing the 1st petitioner and their children. Therefore, the respondent/husband has totally failed and neglected to maintain the family thereafter. Ultimately the respondent/husband also drove the 1st petitioner and their children out of the matrimonial home.

7. But now, the 1st petitioner came to know that the respondent/husband has now taking steps to remarry another lady. Therefore, with the above said intention, the respondent/husband has filed a new case in O.P.No.2964 of 2006 for dissolution of marriage, which is also pending on the same Court. When the petitioners are unable to maintain themselves, since the respondent/husband had

totally failed and neglected to maintain them, they have no other option except to file the above petition to re-open the above suit.

8. Then only the petitioners were approached the Court concerned and they came to know that due to non appearance of the petitioners on 26.07.2004, the above suit in O.S.No.61 of 2004, was dismissed by the Court.

9. The non appearance of the petitioners is neither willful nor wanton, but due to the above said bonafide reason, it was happened. Since the respondent/husband after taking back the petitioners to the matrimonial home, he restrained them from participating in the case proceedings. Therefore, the said suit was dismissed for default on 26.07.2004. Hence, the petitioners have filed two applications, one for setting aside the exparte order by way of restore the suit and another application for condoning the delay of 1176 days in filing the restoration of the petition and prayed the learned II Additional Family Court, Chennai, to allow the said petitions.

10. A counter affidavit has been filed in which the respondent has denied the entire allegations and stated that the petitioners filed the condone delay petition for the delay of 1176 days, is not

maintainable.

11.The respondent/husband states that the 1st petitioner, who is the wife of the respondent/husband has willfully abandoned the matrimonial home without any reason or whatsoever. She caused mental and physical cruelty on the respondent and not even showing her children, who is the petitioners 2 and 3 to the respondent. The 1st petitioner has deserted the respondent/husband without any justification or reasonable cause for the reasons best known to her for more than statutory pried, since the 1st petitioner has developed the ill feeling against the respondent/husband, but the 1st petitioner started blackmailing and attempting to extract money and grab his family properties, which are standing in the name of the respondent's mother. Because of the 1st petitioner's indifferent activity, the respondent/husband has filed a petition in O.P.No.2964 of 2006, on the file of the II Additional Family Court, Chennai for dissolution of marriage. After receiving the summons and after a long delay of 1176 days, the petitioners were filed the present petition to condone the delay in filing petition for restoration of the suit, which was dismissed for default on 26.07.2004.

12.The respondent/husband also states that the petitioners have not given any valid and justifiable reason to condone the delay of 1176 days, this Court and the Hon'ble Apex Court has very categorically held that every day delay should be explained to the satisfaction of the Court and the petitioners have not given any proper reason for non-appearance in the Court and the case in hand filed by the petitioner is not acceptable one. Therefore, he prayed to dismiss the petition.

13.It is admitted fact that the marriage of the 1st petitioner with the respondent/husband, was performed on 09.09.1990 as per Hindu Rites and Customs Act and their marriage was a love and inter-caste marriage, since the 1st petitioner is a Brahmin by caste and the respondent/husband is a Naicker by caste. The entire marriage expenses were borne by the plaintiff/1st petitioner's father. It is admitted fact that the defendant did not spent a single pie towards the marriage expenses. While pendency of the suit in O.S.No.61 of 2004 and the O.P.No.1726 of 2003 filed by the respondent/husband for dissolution of marriage conducted between the 1st petitioner and respondent, the respondent/husband has taken the petitioners for matrimonial life, but later the respondent/husband has sent back the

petitioners to the 1st petitioner's parents house.

14. Being the husband of the 1st petitioner and children, who is the petitioners 2 and 3, the respondent ought to have maintained the petitioners, but in the case on hand, the suit was filed in the year 2004 for seeking maintenance, the O.P.No.1726 of 2003 was filed by the respondent/husband for dissolution of marriage and after 3 years, another O.P.No.2964 of 2006 was filed by the respondent/husband against the 1st petitioner/wife for dissolution of marriage. Therefore, it is made clear that the respondent/husband has not maintained the petitioners right from the year 2003 onwards.

15. This Court and the Hon'ble Apex Court very categorically held that, it is bounden duty of the husband to maintain his wife and children, but in this case, the respondent/husband is not maintained the petitioners from the year 2003 onwards.

16. Giving the false promise by the respondent/husband that he would maintain the petitioners peacefully without taking alcohol and without harassing the petitioners by maintaining the family peacefully.

17. Normally, this Court and the Hon'ble Apex Court would not condone the huge delays like the petitioners case, which is 1176 days delay in filing the restoration petition, but it is the family dispute and the suit also filed only for the maintenance by the petitioners. When the respondent/husband is duty bound to maintain the petitioners, he cannot simply make strong objections for condoning the delay and the Court also without looking into the status of the case had simply dismissed the petition on the ground that the petitioners have not given any valid reason.

18. Therefore, in the interest of justice, I am inclined to allow the civil revision petition by condoning the delay of 1176 days, since the Hon'ble Apex Court in a recent judgment in Civil Appeal No.3777 of 2015 very categorically held that condoning the delay of 882 days delay would not be prejudiced to other parties but that delay should be condoned with cost and accordingly, the Hon'ble Apex Court directed the appellant in the appeal to pay a sum of Rs.50,000/- to the respondent. But, the case in hand, the petitioners, who are the wife and the children seeking maintenance from the respondent, but the said maintenance, the petition was pending from the year 2004 onwards. Therefore, this Court warranting necessity for the interference in the order passed in I.A.No.2374 of 2007 in O.S.No.61

of 2004, dated 21.12.2010, on the file of the II Additional Family Court, Chennai. Accordingly, the same is liable to be set aside.

19.In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.2374 of 2007 in O.S.No.61 of 2004, dated 21.12.2010, on the file of the II Additional Family Court, Chennai, on condition that the petitioner should pay the cost of Rs.1,000/- to the Mediation and Conciliation Centre, Madras High Court, Madras, within a period of two weeks from the date of receipt of a copy of this order;

(b) the learned II Additional Family Court, Chennai, is directed to number the set aside petition and dispose of the same within a period of one month by giving notice to both the parties;

(c) on passing the orders in the restoration petition, the learned II Additional Family Court Judge, is directed to take up the suit in O.S.No.61 of 2004, on day to day basis without giving any adjournment to either parties and

dispose of the same within a period of three months thereafter. Both the parties are directed to give their fullest co-operation for early disposal of the suit. Consequently, connected miscellaneous petition is closed.

07.06.2017

Index:Yes
Speaking Order

To

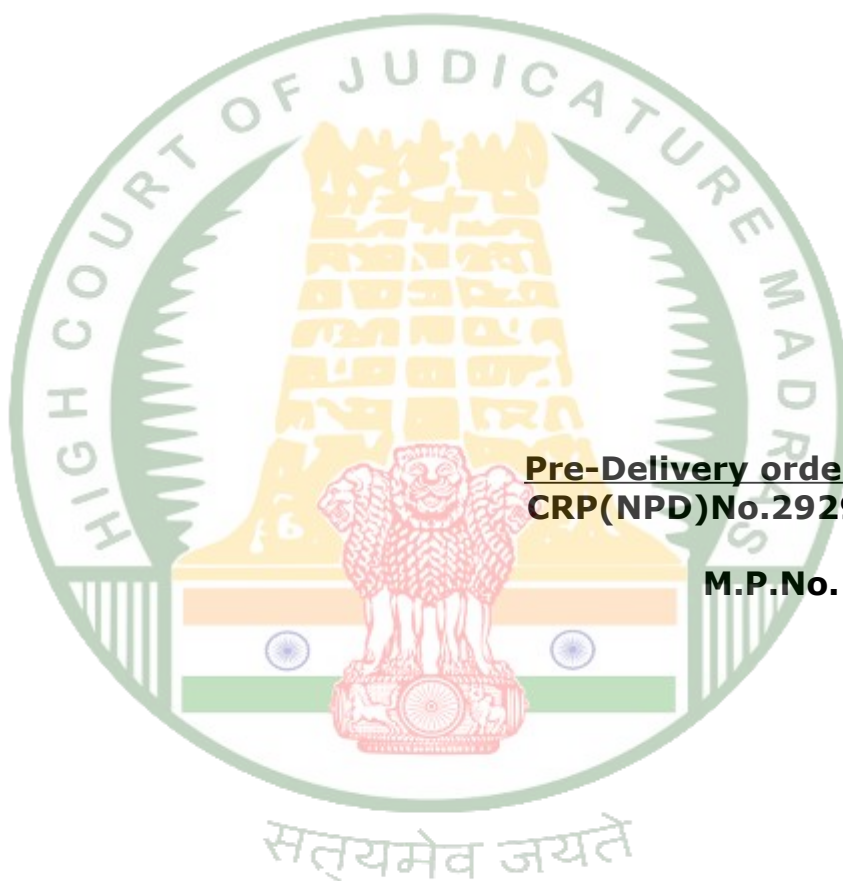
The II Additional Family Court,
Chennai.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.2929 of 2012
and
M.P.No.1 of 2013

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