

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.799 of 2006
& C.M.P.No.6644 of 2006

Lakshmi @ Mangalakshmi

.. Petitioner/Respondent

Vs.

Samayavel

.. Respondent/Petitioner

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 06.03.2006 made in I.A.No.154 of 2005 in M.O.P.No.137 of 2004 on the file of the Family Court, Pondicherry.

For Petitioner : Mr.V.Raghavachari
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the order dated 06.03.2006 made in I.A.No.154 of 2005 in M.O.P.No.137 of 2004 on the file of the Family Court, Pondicherry.

2. The petitioner/wife is the respondent and respondent/husband is the petitioner in M.O.P.No.137 of 2004 on the file of the Family Court, Pondicherry. The respondent filed the said M.O.P. against the petitioner for divorce. Notice in the M.O.P. was sent to the petitioner. Petitioner refused to receive the said notice. She also did not appear on the date of hearing and was set exparte. She did not file any application for setting aside the exparte order. After passing of exparte decree, the petitioner filed I.A.No.154 of 2005 to condone the delay of 146 days in filing the petition to set aside the exparte decree passed in M.O.P.No.137 of 2004.

3. According to the petitioner, on the date of hearing, the petitioner's son was suffering from diarrhoea and she took him

to Koliyanoor for taking treatment from native doctor.

4. The respondent filed counter affidavit opposing the said application on the ground that there is no such doctor in Koliyanoor village. The petitioner has not given any particulars as to when her son was sick and nature of the treatment taken for sickness. According to the respondent, notice sent to the petitioner in the main M.O.P. was returned with an endorsement 'refused'. The petitioner has not explained the reason for refusing to receive the notice. The reason given for condonation of delay is not a valid reason. Thus, he prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application.

6. Against the order of dismissal dated 06.03.2006 made in I.A.No.154 of 2005, the present civil revision petition is filed by the petitioner.

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

8. The learned Judge took note of the fact that the petitioner did not dispute that she refused to receive the notice sent in M.O.P. She has not stated that when she came to know about the exparte decree. The learned Judge recorded the date, when the petitioner was set exparte and on that date, the O.P. was posted for recording evidence. The petitioner in the affidavit has not given any details as to when her son fell sick and nature of treatment taken for him.

9. 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.

10. In the present case, the petitioner refused to receive the notice sent in M.O.P. She has not appeared in Court on number of occasions, when M.O.P. was posted for recording evidence and not given any acceptable and valid reason for condonation of delay.

11. The learned Judge has considered all the aspects in proper perspective and dismissed the application by giving cogent and valid reasons. In the circumstances, there is no illegality or irregularity in the order of the learned Judge

dated 06.03.2009 warranting interference by this Court.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kj

To

The Presiding Officer
Family Court, Pondicherry.

+1 cc to M/s.V.Raghavachari Advocate sr 50270

C.R.P. (NPD) No. 799 of 2006
& C.M.P. No. 6644 of 2006

kj (co)
aa09/08/2017



WEB COPY