

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

CRP (PD)Nos.4750 of 2013 & 2552 of 2014
and MP.No.1 of 2013 & MP.No.1 of 2014

Kamalaveni .. Petitioner in both CRPs
Vs.

R.Kandasamy .. Respondent in both CRPs

Prayer in CRP(PD) No.4750 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 30.8.2013 made in I.A.No.151 of 2011 in HMOP.No.51 of 2011 on the file of the Family Court, Coimbatore.

Prayer in CRP(PD) No.2552 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 07.3.2014 made in I.A.No.1397 of 2013 in HMOP.No.1102 of 2009 on the file of the Family Court, Coimbatore.

For Petitioner : Mr.C.Veeraraghavan
(in both CRPs)
For Respondent : Mr.V.Sivalingam
(in CRP.No.4750/2013) for M/s.C.S.Associates
For Respondent : Mr.S.Pattabiraman
(in CRP.No.2552/2014)

ORDER

Since issues involved in both the civil revision petitions are inter-linked they are disposed of by this common order. In both the civil revision petition, the petitioner is the wife and respondent is the husband.

2. The short facts of the case are the marriage between the petitioner and respondent was conducted on 08.6.2000 as per Hindu rites and customs. In the wedlock, two children were born. Both the petitioner and respondent are lecturer by profession. Due to the dispute that arose between them, they got separated and thereafter, the petitioner filed HMOP.No.1102 of 2009 before the Family Court, Coimbatore against the respondent for divorce. The respondent failed to appear before the trial Court on the date of hearing, and an ex-parte order was passed on 08.4.2010, granting a decree of divorce, dissolving the marriage. Thereafter, the respondent filed a petition in HMOP.No.51 of 2011 for restitution of conjugal rights. He also filed applications viz., I.A.No151 of 2011, seeking a direction to the petitioner to permit him to see his children once in a week in a common place that may be fixed by the Court; and I.A.No.1397 of 2013, to condone the delay of 1208 days in filing the petition to set

aside the ex-parte order dated 08.4.2010 passed in HMOP.No.1102 of 2009. The petitioner filed counter and opposed the said applications.

3. In the application in I.A.No.1397 of 2013, the learned Judge considering the fact that the respondent had filed the applications in HMOP.No.51 of 2011 for restitution of conjugal rights, and application in GWOP.No1162 of 2012 for custody of his minor children, and so also the application filed by the petitioner in M.C.No.210 of 2009, claiming compensation to maintain herself and her minor children and they are pending on its file, with a view to give an opportunity to the respondent to contest the matrimonial proceedings, has allowed the said application vide order dated 07.03.2014. Turning to the other application in I.A.151 of 2011 filed by the respondent seeking permission to visit the children once in a week in a common place, the learned Judge, taking into consideration the interest of the minor children which is the paramount consideration, has allowed the application I.A.151 of 2011 vide order dated 30.08.2013, granting visitation rights to the respondent to visit his children at R.H.R. Hotel, Saveripalayam, Ramanathapuram, Coimbatore on second and fourth Sunday of

every month and the respondent was allowed to take the children out and drop them between 10.00 am. and 1.00 p.m. at the said hotel.

4. Challenging the said orders dated 30.08.2013 and 07.03.2014 passed by the learned Family Judge, Coimbatore, the petitioner-wife has filed the civil revision petitions in CRP (PD) No.4750 of 2013 and CRP (PD).No2552 of 2014 respectively, before this Court.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

6. In so far as CRP (PD) No.2552 of 2014 is concerned, the respondent-husband filed the application in I.A.No.1397 of 2013, to condone the delay of 1208 days in filing the petition to set aside the exparte order. The objection raised by the petitioner in the said application is that the respondent has not given reason for condoning such a huge delay of 1208 days with any valid proof/documents. In the present case, HMOP.No.1102 of 2009 filed

by the petitioner seeking divorce is not the only legal proceeding pending between the parties, and apart from that, applications filed by the respondent in HMOP.No.51 of 2011 for restitution of conjugal rights and GWOP.No1162 of 2012 for custody of minor children; and also the application in M.C.No.210 of 2009 filed by the petitioner for claiming maintenance are pending adjudication. In view of pendency of these proceedings, and in order to give an opportunity to the respondent to contest the matrimonial proceedings on merits, the learned Judge has allowed the application filed by the respondent condoning the delay of 1208 days in filing the petition to set aside the exparte order. It is well settled law 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 have given acceptable and valid reason and the intention of the parties seeking such relief 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 view of such well settled principle, this Court is of the view that the learned trial Judge has rightly allowed the application in I.A.No.1397 of 2013, by exercising his power conferred on him. Therefore, I do not

find any merit in the revision filed by the petitioner in CRP (PD) No.2552 of 2014.

7. The other revision filed by the petitioner in CRP (PD) No.4750 of 2013, arises out of the order passed by the trial Court in I.A.No.151 of 2011. The said application was filed by the respondent seeking visitation rights to see the children. According to him, the petitioner is very adamant, and she is not permitting the respondent to see his minor children. The learned Judge considering the fact that the respondent is the father of the minor children, and the interest of the minor children is a paramount consideration, has granted visitation rights to the respondent. It is necessary that a child must have love and affection of their parents. From the records, it is seen that the learned trial Judge has directed the petitioner to hand over the minor children to the respondent at R.H.R. Hotel, Saveripalayam, Ramanathapuram, Coimbatore on second and fourth Sunday of every month, and have the custody of the children between 10.00 am. and 1.00 p.m. on the said dates, and also permitted him to take the children out.

However, this Court modifies the order of the trial Judge directing the petitioner to hand over the children to the respondent at her residence at 10.a.m. on first and third Sunday of every month, to have the custody of children on the said days at 10.a.m and thereafter, the respondent shall hand over the minor children to the petitioner at her residence at 1.00 p.m.

8. With the above directions, the Civil Revision Petition in CRP (PD) No.2552 of 2014 is dismissed and the Civil Revision Petition in CRP (PD) No.4750 of 2013 is disposed of.

9. The learned counsel appearing for the petitioner and respondent submitted that the proceedings in I.A.No.51 of 2011, GWOP.No1162 of 2012, M.C.No.210 of 2009 filed by the parties are pending before the Family Court, Coimbatore, and hence prays for speedy disposal of the same. The learned Judge, Family Court, Coimbatore is directed to dispose of the cases pending on its file in I.A.No.51 of 2011, GWOP.No.1162 of 2012 and M.C.No.210 of 2009, as expeditiously as possible, in any event not later than six months

from the date of receipt of a copy of this order. No costs.
Consequently, connected miscellaneous petitions are closed.

19.06.2017

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Speaking order/Non-speaking order
Internet : Yes / No
Index : Yes/No

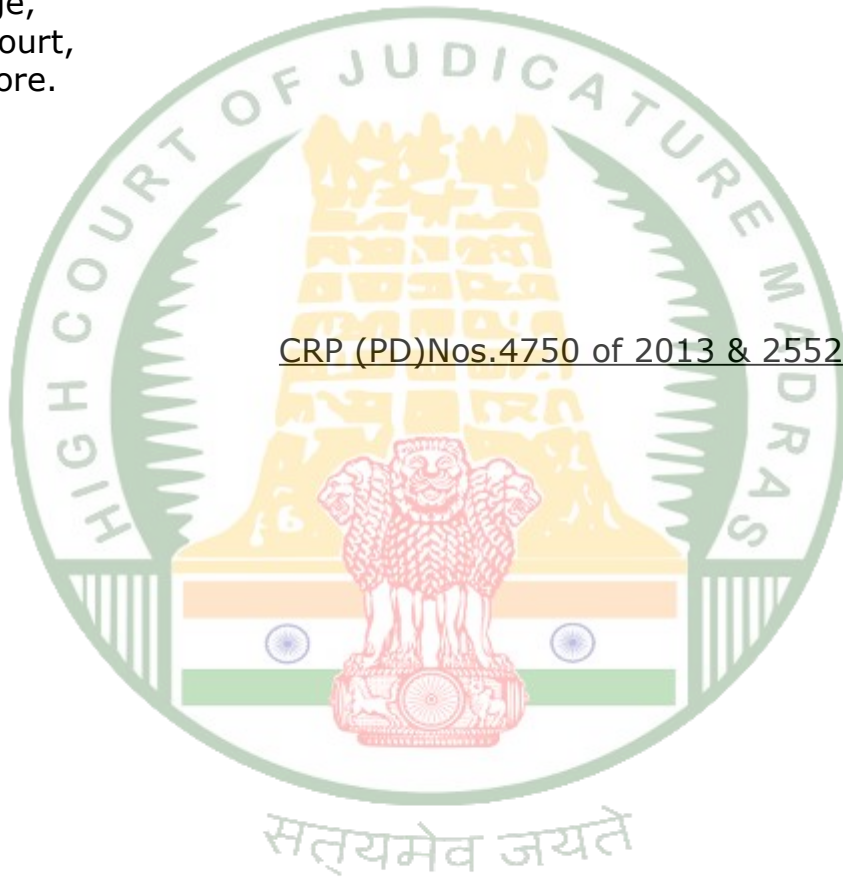


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V.M.VELUMANI, J.

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To:
The Judge,
Family Court,
Coimbatore.



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