

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4808 & 4809 of 2012
M.P.No.1 of 2012

Prakash

.. Petitioner in
both C.R.Ps'

Vs.

Thangam @ Jayamani

.. Respondent
in both C.R.Ps'

PRAYER in both the C.R.Ps': Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 31.08.2012 and 17.09.2012, made in I.A.Nos.1244 and 1338 of 2012 respectively, in H.M.O.P.No.23 of 2011, on the file of the Family Court, Coimbatore.

For Petitioner : Mr. Mr.S.Parthasarathy
Senior Counsel
for Mr.V.Anandha Moorthy
For Respondent : No appearance

COMMON ORDER

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These civil revision petitions have been filed against the fair and decretal orders dated 31.08.2012 and 17.09.2012, made in I.A.Nos.1244 and 1338 of 2012 respectively in H.M.O.P.No.23 of

2011, on the file of the Family Court, Coimbatore.

2. Issues and parties involved in both the civil revision petitions are one and the same, therefore, disposed of by this common order.

3. The petitioner husband filed H.M.O.P.No.23 of 2011, on the file of the Family Court, Coimbatore, for divorce against the respondent wife. The said H.M.O.P was decreed, setting respondent as exparte by the order dated 25.03.2011. The respondent filed two applications in I.A.No.1244 of 2012 to condone the delay of 472 days in filing the petition to set aside the exparte decree dated 25.03.2011 and another application in I.A.No.1338 of 2012 to set aside the exparte decree passed in H.M.O.P.

4. According to the respondent, her mother was ill and she went to her mother's house to look after her. The petitioner informed her to stay with her mother, who is aged 70 years, since the respondent is not having father. The petitioner visited the respondent in her mother's house four times in a week. While so, she received a registered letter from the Court. When she contacted

the petitioner, he informed her that it is only a formal notice and she need not worry about the same and asked her to ignore the same. The petitioner in spite of repeated request, did not come and take the respondent to the matrimonial home. The respondent and her relatives went to the petitioner's house, wherein the petitioner informed the respondent and her relatives that he has obtained a decree of divorce against the respondent and that he cannot take the respondent to the matrimonial home. The respondent verified and obtained a copy of the decree and filed an application to condone the delay of 472 days in filing the petition to set aside the ex parte decree and another application to set aside the ex parte decree. According to the respondent, the petitioner obtained ex parte decree by misleading the respondent.

5. The petitioner filed counter affidavit and denied all the averments made by the respondent and submitted that the respondent, without any reason, left the matrimonial home and was staying with her mother. When the petitioner asked her to come to matrimonial home, she refused. After receipt of notice, she did not contact the petitioner and petitioner did not tell her that its only a formal notice. The respondent is a degree holder and she cannot

ignore the notice received from the Court. She did not appear deliberately. The respondent and her relatives came to the petitioner's house and picked up quarrel with the petitioner on 25.06.2012 at 10.00 a.m and she lodged a complaint before the Inspector of Police, All Womens Police Station, Thudiyalur. But she did not appear for enquiry before the said Police Station. The petitioner got married to one Kanchana on 18.06.2012, after decree of divorce dated 25.03.2011. Only due to the marriage of the petitioner with the said Kanchana, the respondent has come out with the present application, in order to harass the petitioner.

6. Before, the learned Judge, the parties have not let in any evidence and petitioner marked two documents as exhibits.

7. The learned Judge, considering the materials on record, accepted the contention of the respondent and in order to give an opportunity to the respondent to prove her case, allowed the petition to condone the delay, on payment of a cost of Rs.1000/-, on or before 16.09.2012. As far as I.A.No.1388 of 2012 is concerned, the learned Judge allowed the said application, based on the endorsement of no objection.

8. Against the two orders dated 31.08.2012 and 17.09.2012, made in I.A.Nos.1244 and 1338 of 2012 respectively in H.M.O.P.No.23 of 2011, the present two civil revision petitions have been filed by the petitioner.

9. The learned Senior Counsel appearing for the petitioner submitted that it is only the respondent who refused to come to the matrimonial home to live with the petitioner. Only when all the attempts made by the petitioner failed, he filed petition for divorce. He also submitted that the learned Judge, failed to consider the objections raised by the petitioner in the counter affidavit and also the fact that the respondent filed petition only after the petitioner married one Kanchana on 18.06.2012. The petitioner did not make any endorsement for allowing the I.A.No.1388 of 2012 and did not authorise his Advocate to make such an endorsement. There is no name of the Advocate, who made endorsement or date, on which the endorsement is made. On the other hand, he filed counter affidavit in I.A.No.1244 of 2012, filed to condone the delay in filing the petition to set aside the exparte decree and opposed the said

application and stated that he married one Kanchana on 18.06.2012 and on coming to know about the second marriage with the said Kanchana, the petitioner has filed the present application. The learned Senior counsel appearing for the petitioner submitted that the petitioner did not receive a sum of Rs.1000/-, as ordered by the learned Judge as cost.

10. Heard the learned Senior counsel appearing for the petitioner and perused the materials available on record. Though the name of the respondent has been printed in the cause list, there is no representation, either in person or through counsel.

11. From the materials available on record, it is seen that the learned Judge has not considered the averments in the counter affidavit and contention of the petitioner that only after he got married to one Kanchana on 18.06.2012, the respondent has filed application to condone the delay of 472 days in filing the application to set aside the exparte decree of divorce. It is well settled that condone delay in filing the petition to set aside the exparte order must be considered liberally and party should not be shut out at the threshold; but must be given an opportunity to put forth his or her

case. At the same time, party must be vigilant enough to prosecute the case. Filing the application to condone the delay must be bonafide and should not be malafide.

12. In the present case, matrimonial issue is involved. The respondent is a graduate and educated lady. In view of the same, the contention of the respondent that she did not appear and contest the H.M.O.P, as petitioner informed her that it is only a formal notice and ignore the same is unbelievable. The respondent has kept quiet for more than one year and filed the petition with delay of 472 days in filing the petition to set aside the exparte decree, only after the petitioner got married to one Kanchana on 18.06.2012. The contention of the learned Senior Counsel appearing for the petitioner that in an application to set aside the exparte decree, the name of the Advocate, who made an endorsement and date are not found, has considerable force. The learned Judge has not considered all the above facts and allowed the application. He failed to exercise his powers conferred on him properly.

V.M.VELUMANI, J.

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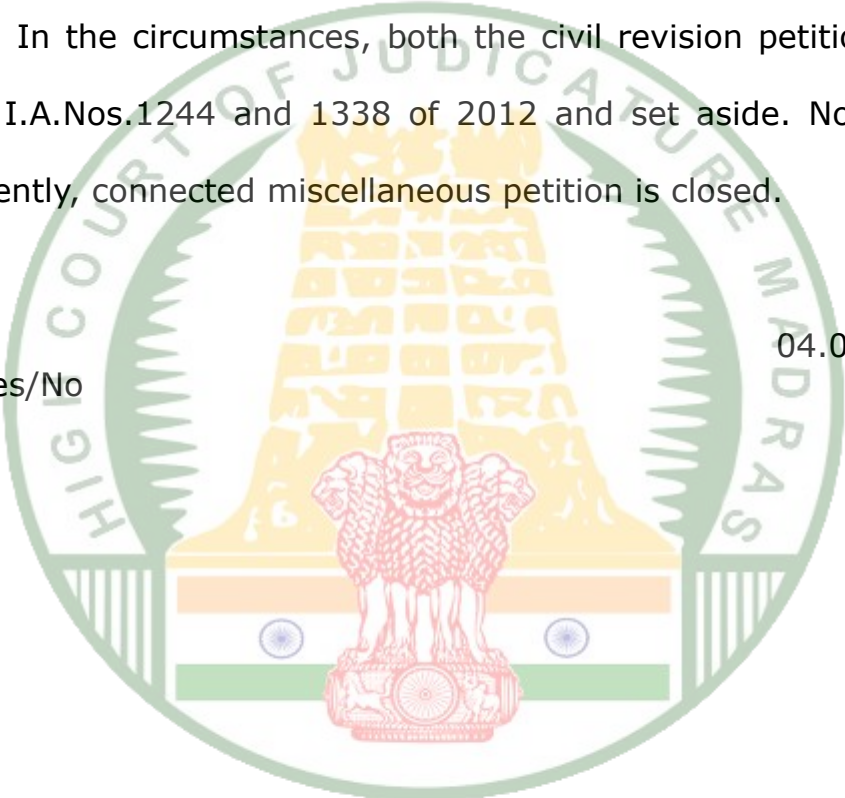
13. In the circumstances, both the civil revision petitions are allowed. I.A.Nos.1244 and 1338 of 2012 and set aside. No costs. Consequently, connected miscellaneous petition is closed.

04.08.2017

Index: Yes/No
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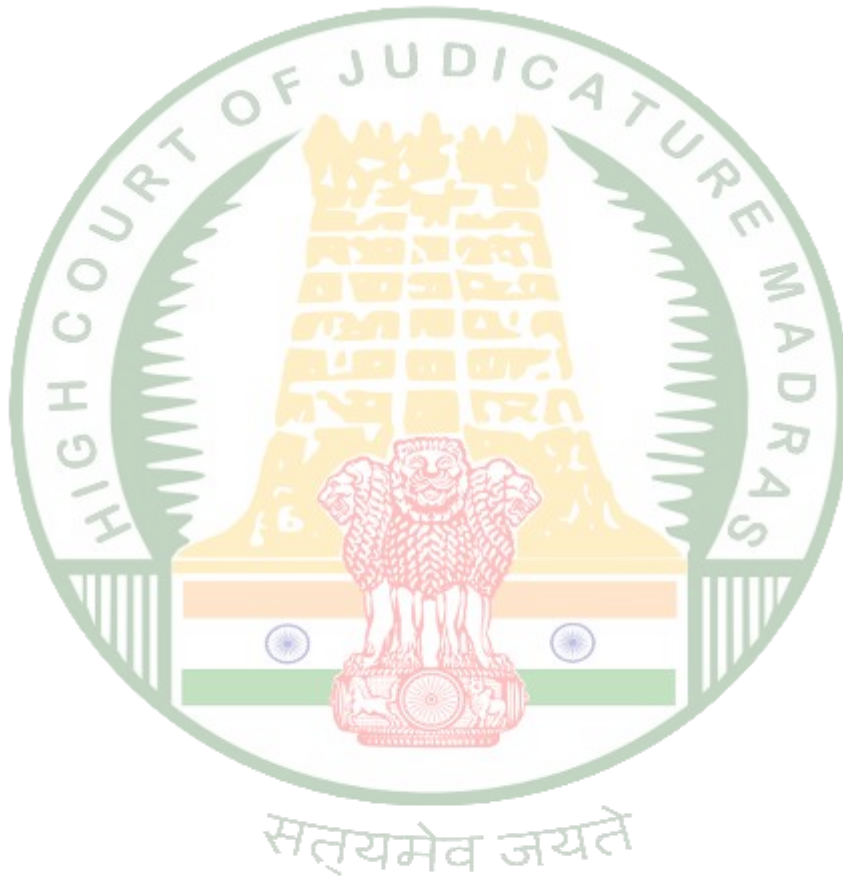
To

The Judge,
Family Court, Coimbatore.

The seal of the High Court of Judicature at Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The lion capital is set against a background of the Indian national flag's saffron, white, and green horizontal stripes. The words 'HIGH COURT OF JUDICATURE MADRAS' are inscribed in a green border around the central image. Below the lion capital, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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