



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD)No.1529 of 2017

Maheswari ... Petitioner/Petitioner/Petitioner

Vs.

Sridhar ... Respondent/Respondent/Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 115 of C.P.C, to set aside the Fair and Decreetal order was passed in I.A.No.73 of 2016 dated 26.04.2017 in H.M.O.P.No.198 of 2011 on the file of the Family Court, Madurai and allow the Civil Revision Petition.

For Petitioner : Mr.K.Samidurai
For Respondent : Mr.Deenadayalan

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the fair and decreetal order dated 26.04.2017, passed in I.A.No.73 of 2016 in H.M.O.P.No.198 of 2011 on the file of the Family Court, Madurai.

2.Heard Mr.K.Samidurai, learned counsel appearing for the petitioner and Mr.Deenadayalan, learned counsel appearing for the respondent.

3.The learned counsel for the petitioner submits that the petitioner was unwell and she had a mental agony on thinking over the litigations. Hence, she was not able to appear in person for hearing in H.M.O.P No.198 of 2011 on 21.11.2013 and therefore, the H.M.O.P.No.198 of 2011 was dismissed. Learned counsel further submits that the absence of the petitioner was neither wilful nor wanton. It is further contended that when the revision petitioner filed restoration petition with a petition to condone the delay of 769 days in filing the restoration petition, the court below without considering the averments made by the petitioner, dismissed the condone delay petition. Hence, the learned counsel prayed to set aside the impugned order.

4.The learned counsel for the respondent would submit that H.M.O.P.No.263 of 2010 was filed by the respondent Under Section 12 (1) (a) of the Hindu Marriage Act, to declare the marriage solemnized between the petitioner and respondent as null and void.



The petitioner failed to appear in H.M.O.P.No.198 of 2011 filed by her under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights and also failed to file counter, in H.M.O.P.No.263 of 2010. Hence, she was set ex-parte and ex-parte decree was passed on 06.12.2013 declaring the marriage solemnized between the petitioner and the respondent on 16.04.2008 as null and void. The petitioner has not chosen to file a petition to set aside the exparte decree passed in HMOP NO.263 of 2010, however, filed an application to condone delay in filing restoration petition to restore H.M.O.P.No.263 of 2010 without assigning any valid reasons. The learned counsel for the respondent further submits that the learned Judge has dismissed the application holding that since, the petitioner has not filed petition to set aside the exparte decree passed in H.M.O.P.No.263 of 2010. She has no *locus standi* to file restoration application to restore HMOP No.198 of 2011. The petitioner, who is no longer the wife of the respondent as per the exparte decree dated 06.12.2013 passed in H.M.O.P.No.263 of 2010, is certainly not entitled to file the present petition, without filing an application to set aside the exparte decree in HMOP No.263 of 2010.

5.The learned counsel for the respondent would further submit that the petitioner nearly after two years filed restoration petition with condone delay petition. Therefore, the Court below has rightly dismissed the I.A which does not require any interference by this Court.

6.As rightly held by the Court below, as of now, by virtue of exparte decree dated 06.12.2013 passed in H.M.O.P.No.263 of 2010, the petitioner is not the wife of respondent, to seek to restore H.M.O.P.No.198 of 2011 filed by her for restitution of conjugal rights. Hence, without setting aside the above said exparte decree, the petitioner cannot file the present petition. So saying, the Court below has rightly dismissed the present I.A. Therefore, this Court is not inclined to interfere with the impugned order.

7.Accordingly, this civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CRL.SIDE)

/True Copy/

Sub Assistant Registrar

To

The Family Court, Madurai.

+1cc to Mr.S.DEENADHAYALAN Advocate in SR. No. 88829

DAS

<https://hcservices.ecourts.gov.in/hcservices/>

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