



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.1532 of 2016 (NPD)

Jyothi, D/o.Kunjumon

.. Petitioner

Vs.

Yesudhasan, S/o.Saveriyar Adimai

.. Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the order dated 13.07.2015, passed in I.A.No.118 of 2014 in I.D.O.P.No.348 of 2011, by the learned District Judge, Kanyakumari District at Nagercoil.

For Petitioner : Mr.S.Titus

For Respondent : Mr.S.Sureshkumar

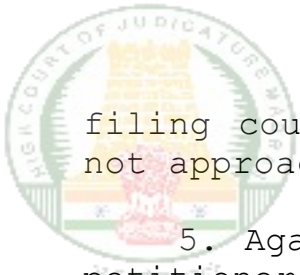
ORDER

This Civil Revision Petition is filed against the order dated 13.07.2015, passed in I.A.No.118 of 2014 in I.D.O.P.No.348 of 2011, by the learned District Judge, Kanyakumari District at Nagercoil.

2. The petitioner is the respondent in I.D.O.P.No.348 of 2011 on the file of the District Court, Kanyakumari District at Nagercoil. The respondent filed the said I.D.O.P. for divorce. An ex-parte decree was passed against the petitioner in the I.D.O.P. on 07.08.2012. Therefore, the petitioner filed I.A.No.118 of 2014 for condonation of delay of 588 days in filing the petition to set aside the ex-parte decree. According to the petitioner, no notice was served on her in the I.D.O.P. She was studying in Nursing Course in Hillside School of Nursing at Bangalore from 2010 to 2012. Therefore, the delay in filing the petition is neither willful nor wanton.

3. The respondent filed counter affidavit and contended that the petitioner has not given any proper or valid reason for condoning the delay.

4. The learned District Judge, Kanyakumari District at Nagercoil, considering the materials on record, dismissed the petition, holding that notice was received by the petitioner and she entered appearance through Advocate one Thiru.Manikandan on 19.12.2011; that in spite of taking number of adjournments for



filing counter, no counter was filed and that the petitioner has not approached the Court with clean hands.

5. Against the said order of dismissal, dated 13.07.2015, the petitioner has come out with the present Civil Revision Petition.

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6. The learned counsel for the petitioner submitted that no notice was served on the petitioner in the I.D.O.P. and she did not engage the Advocate on her behalf to contest her case. During the relevant period, the petitioner was in Bangalore and was studying in Nursing Course. Thiru.Manikandan was bedridden at that time and he has not filed any vakalath on behalf of the petitioner. The respondent has manipulated the document and obtained the ex-parte decree.

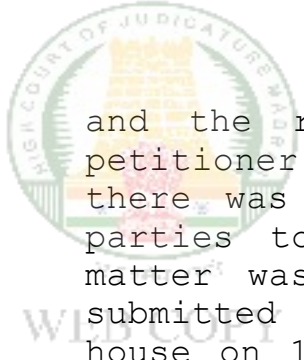
7. The learned counsel for the respondent submitted that the Court ordered fresh notice and the said notice was affixed in the last known address of the petitioner. The petitioner has suppressed the service of notice and has given false reason for condoning the delay. The learned District Judge, Kanyakumari District at Nagercoil, considered all the facts properly and dismissed the application and prayed for dismissal of the Civil Revision Petition.

8. I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.

9. The learned District Judge, Kanyakumari District at Nagercoil, has dismissed the application on the ground that notice in I.D.O.P. was served on the petitioner and she entered appearance through one Thiru.Manikandan, Advocate and that the petitioner has not approached the Court with clean hands. The above reasoning of the learned District Judge is not in consonance with the facts of the case.

10. The respondent/husband himself has admitted that notice in I.D.O.P. was first served on the petitioner through one Nicholas. The said service was not accepted as proper service by the Court and fresh notice was ordered. The said notice was affixed in the last known address of the petitioner. From this, it is clear that notice was not served on the petitioner either personally or on any adult member of the family of the petitioner. When notice was not served personally or as per the procedure on any adult member of the petitioner's family, the notice ought to have been served by substituted service, including the paper publication, having wide circulation in that area.

<https://hcservices.courts.gov.in/hcservices> 11. In the Civil Revision Petition was taken up for hearing on 19.01.2017, the learned counsel for the respondent submitted that the matter has been settled amicably between the petitioner



and the respondent and he filed an affidavit signed by the petitioner. The learned counsel for the petitioner submitted that there was no settlement. Hence, this Court directed both the parties to appear before this Court on 24.01.2017. When the matter was taken up for hearing on 24.01.2017, the petitioner submitted that the respondent and his two friends came to her house on 17.01.2017 and gave two Demand Drafts for Rs.2,00,000/- and Rs.1,00,000/- respectively and half sovereign gold ring to her and promised to return balance dowry amount of Rs.5,00,000/- and 46¼ sovereigns of gold jewels after three months. He obtained her signature for part payment of amounts. Apart from denied settlement, she also furnished details of complaints given by her before the Judicial Magistrate, Eraniel, Kanyakumari. The respondent submitted that only the petitioner, who approached him through Church people for settlement and the matter has been amicably settled.

12. Considering all these materials on record as a whole and the statement of the petitioner and the respondent, I hold that the notice in I.D.O.P. was not served on the petitioner as per the procedure and therefore, the petitioner has explained the delay properly and she has given sufficient reasons to condone the delay. In the circumstances, the fair and decretal order, dated 13.07.2015, passed in I.A.No.118 of 2014 in I.D.O.P.No.348 of 2011, by the learned District Judge, Kanyakumari District at Nagercoil, is set aside. Accordingly, the Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar(R)

/True Copy/

Sub Assistant Registrar

To

The District Judge,
Kanyakumari District at Nagercoil.

+1cc to Mr.Sureshkumar, Advocate SR.No.9596

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