

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CIVIL REVISION PETITION NO.994 OF 2017

ORDER:

This Civil Revision Petition is filed challenging the order dated 31.12.2009 passed in I.A.No.569 of 2006 in O.P.No.61 of 2004 on the file of the Court of Senior Civil Judge, Huzurabad (for short, trial Court).

2. O.P.No.61 of 2004 was filed by the respondent herein for dissolution of marriage with the petitioner herein. The trial Court allowed the OP.No.61 of 2004 by dissolving the marriage between the petitioner and respondent by granting a decree of divorce. The order was an ex parte order.

3. Aggrieved by the order, the petitioner wife filed a petition to set aside *ex parte* decree. As there was delay in filing the said petition, she filed I.A.No.569 of 2006 for condoning the delay of 398 days in filing the petition to set aside *ex parte* decree. The trial Court has dismissed I.A.No.569 of 2006 holding that there was no sufficient cause to condone the delay. Aggrieved by that, this revision is filed to set aside the order passed in I.A.No.569 of 2016 in the above OP.

4. Sri Jagatsen Reddy, counsel representing Sri K.Butchi Babu, learned counsel for petitioner, advanced his arguments. In spite of service of notice to the respondent, none appeared on his behalf. However, the learned counsel for petitioner submitted that the petitioner and respondent are living together as wife and husband for last three years and they were also blessed with a child.

5. The revision petitioner is present before the Court along with her son, who is aged about 2 ½ years and she stated before the Court that she has been living with her husband for the last three years. She further

stated that her husband was having examinations, and therefore, he could not attend before the Court today, and he has also not engaged an advocate to represent him, as they are living together.

6. The learned counsel for the revision petitioner also submitted that the petitioner has not received any notice from the trial Court, but the trial Court, having assumed that the notice has been served, granted *ex parte* decree of divorce in favour of the respondent. As the notice was not served, the petitioner could not appear before the trial Court. The petitioner was also suffering ill-health, and therefore she could not prosecute her case within the stipulated time, and therefore, the delay of 398 days in filing the petition to set aside the *ex parte* decree neither wanton nor intentional.

7. In the light of the submissions made by the learned counsel for the revision petitioner, and since the respondent has failed to appear before the Court having received the notice, it is obvious that the reasons stated by the petitioner in her affidavit appear to be genuine and there is sufficient cause for her non-appearance before the trial Court. Therefore, the delay of 398 days in preferring the petition to set aside the *ex parte* decree is condoned.

8. In the result, the revision petition is allowed setting aside the order passed by the trial Court in I.A.No.569 of 2006.

9. As a sequel, miscellaneous petitions, pending if any, shall stand dismissed. No order as to costs.

GUDI SEVA SHYAM PRASAD, J

Date: 07.03.2017.
SSP