

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION Nos.4820 and 4861 of 2017

COMMON ORDER:

Since the issue involved in these Civil Revision Petitions is inter-related, they are being disposed of by this common order.

2. These Civil Revision Petitions, under Article 227 of the Constitution of India, are preferred by the petitioner assailing the orders both dated 21.08.2017 in I.A.Nos.477 and 478 of 2016 in O.P.No.67 of 2015 passed by the Principal Senior Civil Judge, Mancheri, Adilabad District, allowing the applications filed by respondent No.1 in O.P.No.67 of 2015 (i) under Section 5 of the Limitation Act to condone the delay of 188 days in filing the petition to set aside the *ex parte* order dated 18.01.2016; and (ii) under Order IX, Rule 13 of C.P.C. to set aside the *ex parte* decree dated 18.01.2016, respectively.

3. The petitioner herein filed O.P.No.67 of 2015 against respondent Nos.1 and 2 herein under Section 13(1)(i)(ia) of the Hindu Marriage Act, 1955 (for brevity "the Act") seeking dissolution of marriage and the same was decreed *ex parte* on 18.01.2016. Aggrieved by the said *ex parte* order, the respondent No.1-wife filed I.A.No.478 of 2016 in O.P.No.67 of 2015 to set aside the said *ex parte* order dated 18.01.2016, along with

I.A.No.477 of 2016 seeking to condone the delay of 188 days in filing application to set aside the *ex parte* order, contending that the petitioner has wrongly mentioned his father's name as 'Ramachandram' instead of 'Seetharamulu' and that there was no proper service of notice on her in the main petition. The petitioner-husband filed counter in the said applications denying the allegations made therein. After considering the rival submissions, the Court below allowed the said applications vide separate orders both dated 21.08.2017. Aggrieved by the same, the petitioner-husband has filed the present Civil Revision Petitions.

4. Heard Sri P. Mehar Srinivasa Rao, learned counsel for the petitioner-husband as well as Sri L. Dayakar Reddy, learned counsel for respondent No.1-wife and perused the material on record.

5. Learned counsel for the petitioner-husband submits that the notice in the main O.P.No.67 of 2015 has been served to the correct address of respondent No.1-wife by affixing the same to the door of the house of the father of respondent No.1-wife, where she is residing. Learned counsel also would submit that the petitioner-husband also got issued a legal notice dated 15.03.2016 to respondent No.1-wife on the same address informing about passing of *ex parte* order and the same has been received by respondent No.1-wife, therefore, there is proper service of notice

and respondent No.1-wife has got knowledge about passing of *ex parte* order in the divorce petition and no sufficient cause has been shown to condone the delay in filing application to set aside the said *ex parte* order.

6. On the other hand, learned counsel for respondent No.1-wife submits that notice has not been served on the correct address of respondent No.1 and that the name of petitioner's father has been wrongly mentioned as 'Ramachandram', instead of mentioning as 'Seetharamulu'. Learned counsel also submits that serious allegations of adultery were made against respondent No.1-wife in the main petition and if the trial is not conducted, respondent No.1-wife cannot prove that the allegations made against her are all false. Learned counsel would further submit that respondent No.1-wife came to know about passing of *ex parte* order dated 18.01.2016 only on receipt of legal notice dated 15.03.2016 issued by the petitioner-husband enclosing the said *ex parte* order and subsequently she filed application to set aside the said *ex parte* order along with an application to condone the delay in filing application to set aside the said *ex parte* order and on contest, the said applications were allowed by the Court below and hence the impugned orders do not require any interference.

7. It is pertinent to note that though respondent No.1-wife tried to explain the delay in filing application to set aside the *ex parte* order.

8. On consideration of the submissions made by learned counsel for the respective parties, since this is a matrimonial dispute, in the interest of both the parties and to avoid multiplicity of proceedings, this Court is of the considered view that it is just and proper to allow both the applications in I.A.Nos.477 and 478 of 2016 in O.P.No.67 of 2015 on deposit of costs of Rs.1,000/- on each application payable to the District Legal Services Authority, Adilabad District, before the Court below within a period of two weeks from the date of receipt of a copy of this order. The trial Court is directed to expedite the trial in O.P.No.67 of 2015 and both the parties are directed to cooperate with the trial.

9. Accordingly, both the civil revision petitions are disposed of with the above directions. No order as to costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

08.12.2017.
Msr

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