

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4753 OF 2017

ORDER:

This is a Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner-husband assailing the orders, dated 11.08.2017, of the learned Principal Senior Civil Judge, Mahabubnagar, passed in I.A.No.77 of 2007 in O.P.No.3 of 2014.

2. I have heard the submissions of *Sri B.Mohan*, learned counsel for the petitioner, at the stage of admission. I have perused the material record.

3. To begin with, it is to be noted that the petitioner herein filed the above said OP against the 1st respondent-wife and her alleged adulterer under Section 13 (1) (ia) of the Hindu Marriage Act, 1955, for dissolution of marriage by way of decree of divorce. The 1st respondent is resisting the said original petition by filing a counter. However, in March, 2014, the OP was dismissed against the 2nd respondent for non-payment of process for service of notice on the said respondent. Later, the enquiry was conducted in the OP and after both parties adduced evidence, the OP is now coming for hearing arguments. At that stage, the afore-stated interlocutory application is filed by the petitioner/husband to set aside the order of dismissal, dated 25.03.2014, which was passed for default in payment of process for service of notice on the 2nd respondent and to restore the said OP to file against the 2nd respondent. The said application was resisted by the 1st respondent-wife. By the orders impugned in this revision, the Court below dismissed the petition. Therefore, the petitioner-husband is before this Court.

4. Learned counsel for the petitioner would submit as follows: 'Due to oversight the process fee could not be paid for service of notice on the 2nd respondent with whom the 1st respondent is having a love affair. The OP is filed for granting a decree of divorce after dissolving the marriage between the petitioner/husband and the 1st respondent/wife by impleading her adulterer as the 2nd respondent. However, for non-payment of process, the OP against the 2nd respondent was dismissed for default, on 25.03.2014. In view of the averments in the original petition of the petitioner/husband, the prosecution of the petition against the 2nd respondent also is highly essential; and without his presence as a party respondent to the proceeding, the petitioner (husband) may not be able to prove his case as required under facts and in law. Therefore, the application is filed for setting aside the order of dismissal passed against the 2nd respondent and for restoration of the original petition against the 2nd respondent. But the trial court erroneously dismissed the petition *inter alia* observing erroneously that the petitioner is aware of the dismissal of the original petition against the 2nd respondent for default and yet, filed the interlocutory application at a belated stage, that is, when the main OP is at the stage of arguments, without offering any explanation in the affidavit filed in support of the petition for the delay.'

5. I have given earnest consideration to the facts and submissions.

6. From the facts and submissions, the following aspects are discernable: 'The original petition filed by the petitioner/husband against the 1st respondent/wife and the 2nd respondent, who was her alleged adulterer, was dismissed for default, on 25.03.2014, against the 2nd respondent for non-payment of process. Though the petitioner is aware of the said fact, no immediate or prompt steps were taken by him

for setting aside the said order of dismissal for default and for restoration of the main OP against the 2nd respondent. Without taking appropriate steps, the petitioner in the OP proceeded to participate in the trial/enquiry of the OP. Thus, in the main OP, both the petitioner and the 1st respondent adduced evidence. After the closure of the evidence of the petitioner and the 1st respondent, the OP is now coming for hearing arguments. At that stage, the petitioner filed the subject interlocutory application in January, 2017, that is, about three years after the dismissal order, by only stating that by oversight process could not be deposited in February, 2014 for service of notices in the OP on the 2nd respondent. No whisper is made in the affidavit for the long delay in seeking restoration of the OP against the 2nd respondent and for setting aside the order of dismissal for default passed against the 2nd respondent in the OP.' From the facts and the circumstances, it is manifest that the delay of about three years in seeking the relief is due to gross negligence and deliberate conduct of the petitioner/husband. It is well settled that the Court comes to the rescue of a party who is vigilant but not the party who is indolent and grossly & deliberately negligent.

7. Viewed thus, this Court finds that the trial court is justified in dismissing the petition of the petitioner and that there is no merit in the revision.

8. Accordingly, the Civil Revision Petition is dismissed confirming the orders of the Court below. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

September 15, 2017
Lm v