

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.3179 OF 2017

O R D E R

This civil revision petition under Section 115 CPC arises out of the order dated 08.05.2017 passed by the learned Judge, Family Court, Ranga Reddy District, in I.A.No.221 of 2017 in F.C.O.P.No.1178 of 2010. The said I.A. was filed by the petitioner under Section 5 of the Limitation Act, 1963, seeking condonation of the delay of 891 days in filing an application to set aside the *ex parte* decree dated 24.10.2013 passed in the O.P., filed by the respondent herein for restitution of conjugal rights, claiming to be his wife. By the order under revision, the Family Court dismissed the I.A.

Notice before admission was ordered in this revision on 14.07.2017 and Sri P.Bhakthavatsal, learned counsel for the petitioner, was permitted to take out notice to the respondent by registered post with acknowledgement due. Thereupon, he did so and filed the returned envelope under Memo dated 28.07.2017.

Perusal of the returned envelope reflects that it was addressed to the respondent at House No.1-8-607/74, Achaiah Nagar, Bagh Lingampally, Hyderabad, but was returned with the endorsement of the postal authorities that no such person was there. This was the very address given by the respondent in F.C.O.P.No.1178 of 2010, which was filed by her for restitution of conjugal rights. Further, after securing the *ex parte* decree dated 24.10.2013 therein; she filed E.P.No.10 of 2014, again showing the same address as her own.

Sri P.Bhakthavatsal, learned counsel, would inform this Court that no steps were taken by the respondent to amend the cause title in the execution petition, indicating any other address as her own.

The respondent deliberately seems to have avoided the notice despite the same address being shown in her pending execution petition. That being so, service of notice upon the aforestated address, which continues to be shown as the address of the respondent in the pending execution petition, is sufficient and notwithstanding the return thereof with the endorsement that no such person is available in the address, this Court opines that it would amount to deemed service of notice.

Heard Sri P.Bhakthavatsal, learned counsel for the petitioner.

F.C.O.P.No.1178 of 2010 was filed by the respondent claiming to be the wife of the petitioner and seeking restitution of conjugal rights. He, on the other hand, claimed that he never married her and they had never led marital life together at any point of time. He therefore sought condonation of the delay of 891 days in filing an application to set aside the *ex parte* decree passed in the O.P. on 24.10.2013. Admittedly, the petitioner engaged a counsel in the said O.P. and filed his counter but was set *ex parte* thereafter as he failed to appear before the Court. The reason offered by Sri P.Bhakthavatsal, learned counsel, for this failure on the part of his client is that the case filed by the respondent against the petitioner under Section 498-A IPC, which was taken on record by the learned XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad, in C.C.No.611 of 2010, ended in his acquittal *vide* judgment dated 18.03.2014. The Magistrate recorded therein that the version of the respondent herein was very much oscillating as she had deposed that she married one Ananthaiah when she was 11 years old and after his death, she married Venkataramana, with whom she was blessed with three children, and she did not disclose

whether she obtained a divorce whereby she could claim harassment by the petitioner herein under Section 498-A IPC. Sri P.Bhakthavatsal, learned counsel, would state that in the light of this judgment, his client was of the opinion that the claim of the respondent in F.C.O.P.No.1178 of 2010 no longer warranted consideration and that was the reason why he failed to appear, despite having filed his counter therein.

Significantly, this judgment in C.C.No.611 of 2010 was rendered in March, 2014 and he was presumably set *ex parte* only thereafter leading to the *ex parte* decree being passed in the O.P. on 24.10.2013. His case was that he never married the respondent and, on the other hand, he had married another woman on 05.11.2008. He stated in the affidavit filed in support of the I.A. that after the respondent filed E.P.No.10 of 2014 based on the *ex parte* decree dated 24.10.2013 secured by her in the O.P., he was advised to take steps to get it set aside and in this regard, the delay had occurred. He further stated that he was very poor, leading a hand to mouth existence by doing a menial job, and was therefore unable to take steps. Though these aspects were taken into consideration by the Family Court, the fact that the E.P. was filed in December, 2014, wherein the petitioner entered appearance on 02.02.2015 but he did not choose to file the subject application till 03.05.2016, was held against him and on this ground, the Family Court refused to condone the delay. Significantly, the Family Court did not take note of the plea of penury put forth by the petitioner as the chief ground for the delay on his part in taking steps to get the *ex parte* decree set aside.

In a matter of this nature, where the status of the woman that the petitioner married on 05.11.2008 hung in balance in view of the

claim of marriage by the respondent, which was stoutly denied by the petitioner, it is desirable that there is an adjudication on merits. Human relationships cannot be bartered away on the strength of technicalities. When the petitioner specifically contended that owing to his poverty he could not take steps immediately and he had a satisfactory explanation as to why he failed to appear in the O.P. after filing his counter, the Family Court ought to have been more liberal in its approach while dealing with the condone delay petition. The pedantic and hide-bound approach adopted by the Family Court in this regard is therefore unsustainable on facts and in law.

The order under revision is accordingly set aside and I.A.No.221 of 2017 in F.C.O.P.No.1178 of 2010 is allowed, duly condoning the delay on the part of the petitioner. However, as the delay in this regard is well over two years, this Court is of the opinion that such condonation cannot be unconditional and he must necessarily be put on terms. The petitioner shall therefore pay a sum of Rs.500/- to the respondent and upon proof of such payment being produced, the Family Court shall take up the application filed by him to set aside the *ex parte* decree dated 24.10.2013 passed in the O.P. and consider the same on its own merits and in accordance with law.

The civil revision petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

18th AUGUST, 2017

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