

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD)Nos.1469 & 1470 of 2018
and CMP.Nos.7838 & 7839 of 2018

P.Pushapanathan

.. Petitioner in both CRPs.

Vs.

P.Chitraleka @ Chitra

.. Respondent in both CRPs.

Prayer in both CRPs. : Civil Revision Petitions filed under Article 227 of the Constitution of India praying to set aside the order and Decretal order dated 03.01.2018 made in I.A.Nos.1286 & 1287 of 2016 in FCOP.No.2663 of 2010 on the file of the IV Additional Principal Judge, Family Court, Chennai.

For Petitioner : Mr.N.Vijaya Baskar

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the order passed by the learned IV Additional Principal Judge, Family Court, Chennai in I.A.Nos.1286 & 1287 of 2016 dated 03.01.2018.

2. According to the petitioner, he has filed the petition in FCOP.No.2663 of 2010 seeking divorce on the ground of desertion. On 20.11.2010, the petitioner/husband was present, but neither the respondent /wife nor his counsel was present on the above said hearing. Hence, the respondent was called absent and set exparte and an exparte decree was passed on the same day. Thereafter, the respondent herein has filed two applications in I.A.No.1286 of 2016 to condone the delay of 1986 days in filing the petition to set aside the exparte decree dated 20.11.2010 passed in F.C.O.P.No.2663 of 2010 and another application in I.A.No.1287 of 2016 was filed to set aside the exparte decree passed in F.C.O.P.No.2663 of 2010. Since the application is filed beyond the limitation period, she filed yet another application in I.A.No.1286 of 2017 to condone the delay in filing the petition to set aside the exparte decree. Both the applications were taken on file together and also disposed by common order. After hearing the arguments of both sides, both applications were allowed on 03.01.2018. Feeling aggrieved against the said orders, the petitioner has filed the present Civil Revision Petitions before this Court.

3. Heard the learned counsel for the petitioner and also perused the materials available on record.

4. It is not in dispute that both the petitioner and the respondent are husband and wife. The petitioner filed the petition in FCOP.No.2663 of 2010 seeking divorce and also got an exparte decree dated 20.11.2010. Subsequently, the respondent had filed the application to set aside the exparte decree and since she could not file the application within 30 days from the date of decree and she filed yet another application in I.A.No.1286 of 2017 to condone the delay of 1986 days in filing the petition to set aside the exparte decree dated 20.11.2010.

5. The learned counsel for the petitioner would contend that when exparte decree is passed, within 30 days, the respondent should have filed the application to set aside the exparte decree. Since she filed the application to condone the delay, the Court, after disposal of the application to condone the delay in filing petition to set aside the exparte decree. But in this case, without disposing the application seeking for condoning the delay in filing the petition to set aside the exparte decree, simultaneously numbered both the applications. Therefore, the Trial Court has failed to consider the legal position and has taken both the applications simultaneously and also dismissed the same by common order dated 03.01.2018, which is against the legal

principles. Therefore, impugned orders passed by the trial Court is liable to be set aside.

6. Though it is well settled proposition that if any application to set aside the exparte decree was filed beyond the period of limitation which shall be filed only along with an application to condone the delay in filing application to set aside the exparte decree, then the application to condone the delay alone has to be decided first. The counter affidavit filed by the petitioner herein, in which it is stated that there is no reason for condoning the delay in filing the application to set aside the exparte decree. If that be the position, then the application in I.A.No.1286 of 2016 should have been taken on file and disposed of first and after disposal of the said application to condone the delay subsequently the application to set aside the exparte decree should have been taken on file. Admittedly, in this case, both the applications have been taken simultaneously and disposed of by the common order. However, the Trial Court has given a reason that it is only technical error and the petitioner obtained only exparte decree and in order to give an opportunity to the respondent to put forth her defence in main petition for divorce filed by the petitioner herein.

7. Eventhough a wrong procedure was adopted by the Court below in taking both the applications on file simultaneously and disposed of the same by passing common order, but, no prejudice would be caused to the petitioner. Time and again, the Hon'ble Supreme Court and this Court held that substantial justice should not be denied on technical ground.

8. Considering the facts and circumstances of the case, this Court is not inclined to interfere with the order passed by the learned IV Additional Principal Judge, Family Court, Chennai in I.A.Nos.1286 and 1287 of 2016 in FCOP.No.2663 of 2010 dated 03.01.2018. Hence, the impugned orders passed by the Trial Court are hereby confirmed and the Civil Revision Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

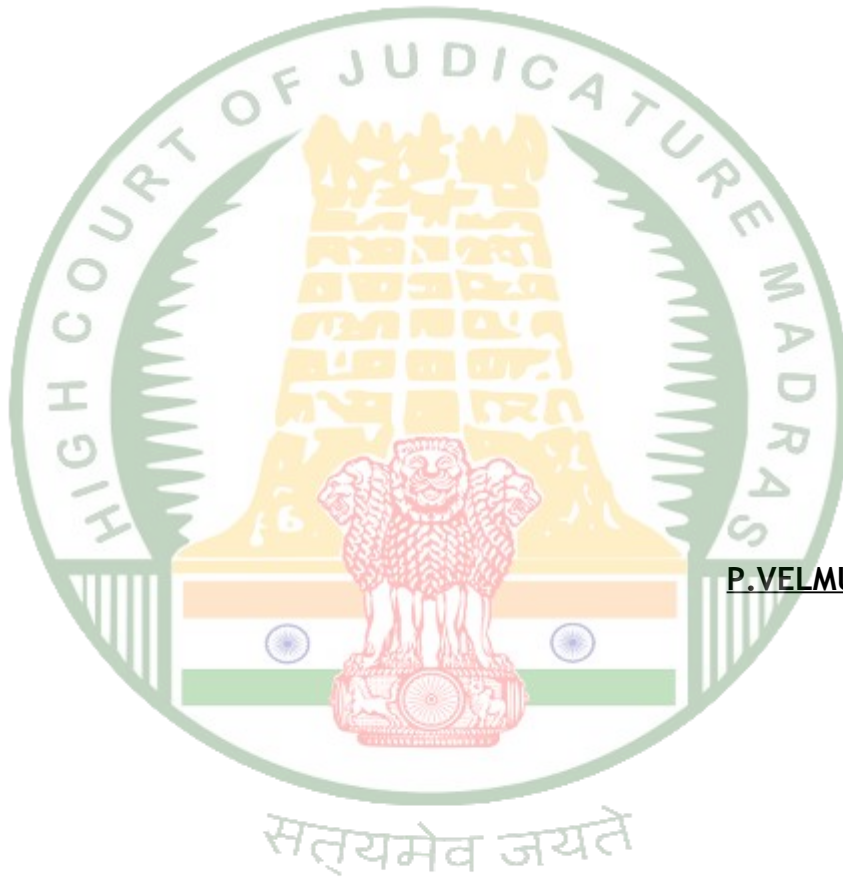
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Index:Yes/No
Internet : yes/No
Speaking order / Non speaking order
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To

IV Additional Principal Judge,

Family Court, Chennai.

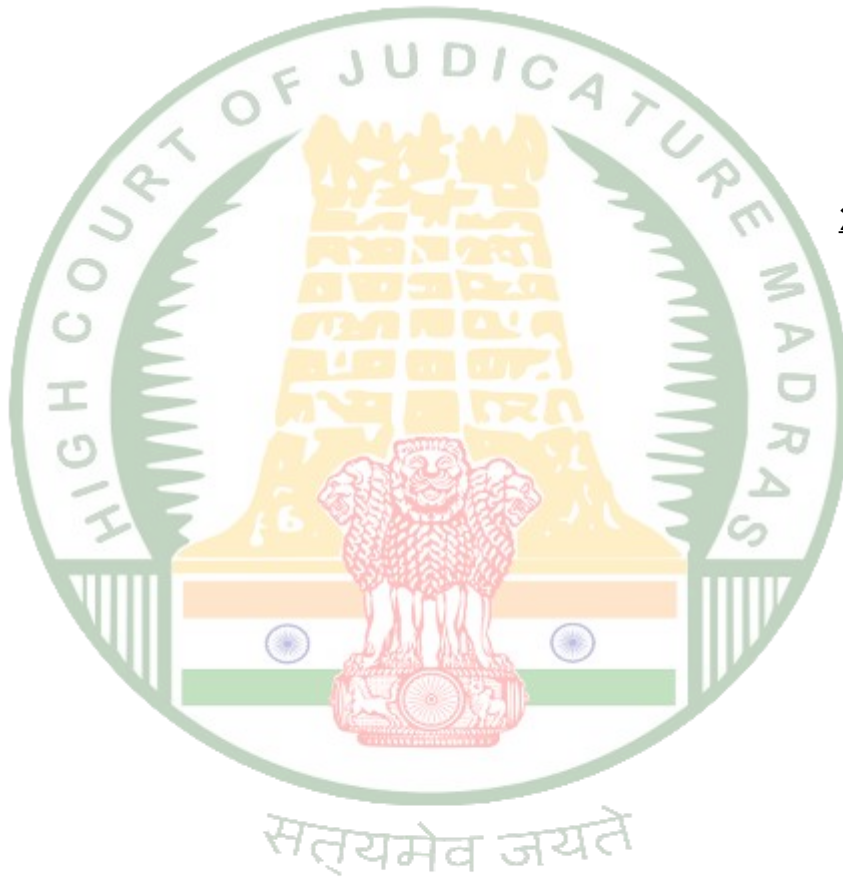


P.VELMURUGAN, J.

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