

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) No.4056 of 2017

B.Krishnamoorthy

... Petitioner

Versus

D.Kowsalya

... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 14.09.2017 passed in I.A. No.512 of 2017 in F.C.O.P. No.247 of 2014 on the file of the Family Court, Vellore by allowing the C.R.P. with cost.

For Petitioner

Mr.K.Gajendiran

For Respondent

Mr.G.K.Sekar

ORDER

The petitioner has filed FCOP No.247 of 2014 for dissolution of marriage on the file of the Sub Court, Vellore. In the aforesaid O.P., the petitioner was unable to appear on the hearing date. Therefore, the suit was dismissed for default. Challenging the aforesaid order of dismissal for default, the petitioner has filed the application in I.A. No.512 of 2017 to condone the delay of 467 days in filing application under Order IX Rule 9 of CPC to restore the same, against which, the present Civil Revision Petition is filed.

2. According to the learned counsel for the petitioner, the petitioner is serving in Indian Army, Indo-China Border at Arunachal Pradesh and deputed for secret operation along with the line of control for the past 1 1/2 years, since he was under deputation for a confidential one, he was unable to contact even his parents or relatives over phone and could not able to contact his counsel. In view of the aforesaid bonafide reasons, he was unable to obtain the details of the stage of the case, he did not appear before the Court below on the aforesaid date. Therefore, he prays that the order of the Court below is liable to be set aside.

3. The learned counsel for the petitioner filed the copy of the affidavit filed along with condone delay application of 467 days in filing to set aside the ex-parte decree. At the time of hearing, the petitioner has filed the additional affidavit before the Court below and explained the reasons for the delay of 467 days in filing and to restore the O.P.

4. The learned counsel for the respondent objected the contention of the revision petitioner submits that the said application filed without stating sufficient reason to condone the delay in filing set aside ex-parte decree.

5. However, by considering the nature of service rendered by the petitioner in the Indian Army, this Court is inclined to set aside the order passed by the Court. Accordingly, the order passed by the Court below in I.A. No.512 of 2017 is set aside and the matter is remitted to the Sub Court, Vellore for fresh consideration in the light of the additional affidavit filed by the petitioner and the evidence adduced

therein and pass orders on merits in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

6. In view of the above facts, the Civil Revision Petition stands allowed. No costs.

7. In the meantime, the learned counsel on both sides shall request before the Court below to refer the matter to the Mediation centre therein for an amicable settlement between the parties.

21.02.2018

Index : Yes/No
Internet : Yes / No
Speaking/Non Speaking
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To
The Family Court, Vellore.

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D.KRISHNAKUMAR, J.

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