

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2502 of 2013
& M.P.No.1 of 2013

Prakash

.. Petitioner

Vs.

Sudha

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 18.06.2013 made in I.A.No.25 of 2013 in H.M.O.P.No.12 of 2010 on the file of the Subordinate Court, Dharapuram, Tiruppur District.

For Petitioner : M/s.J.Star
for Mr.N.Manokaran

For Respondent : No appearance

ORDER

सत्यमेव जयते

This Civil Revision Petition has been filed against the fair and decretal order dated 18.06.2013 made in I.A.No.25 of 2013 in H.M.O.P.No.12 of 2010 on the file of the Subordinate Court, Dharapuram, Tiruppur District.

2.The petitioner/husband filed H.M.O.P.No.12 of 2010 on the file of the Subordinate Court, Dharapuram, Tiruppur District against

the respondent/wife for divorce. The respondent did not appear before the Court and ex parte decree was passed on 31.08.2010. The respondent filed I.A.No.25 of 2013 to condone the delay of 893 days in filing the petition to set aside the ex parte decree of divorce. According to the respondent, notice through Court Amin was not served on her. The petitioner by playing fraud, created documents as though notice sent by Registered Post with Acknowledgement Due was served on the respondent. She came to know that the petitioner has got married again and when she gave a complaint in All Women Police Station, wherein a copy of the ex parte decree passed in H.M.O.P.No.12 of 2010 on the file of the Subordinate Court, Dharapuram was furnished to her. She has approached the legal aid and through Mr.R.Subbramanian, Advocate, the legal aid, the respondent came to know about the ex parte decree obtained by the petitioner by making false allegations against her. In fact petitioner promised to take her back and prayed for condoning the delay in filing the application to set aside the ex parte decree.

3.The petitioner filed counter affidavit and denied all the averments made by the respondent. The petitioner contended that the respondent, inspite of intervention of elders, did not join the petitioner. Notice sent by the Court through Registered Post with

Acknowledgement Due was served on the respondent, but she did not appear. After two years of decree of divorce, the petitioner got married to one Kavitha on 30.11.2012 who is a widow and whose father is no more. The respondent was aware of the H.M.O.P filed by the petitioner and exparte decree and second marriage earlier. Only to harass the petitioner, the respondent has given false complaint before the All Women Police Station and prayed for dismissal of the application.

4.Before the learned Judge, both the petitioner and respondent did not let in any oral evidence. The petitioner marked 12 documents as Exs.R1 to R12 to substantiate his contention.

5.The learned Judge by the order dated 18.06.2013 allowed the said application filed by the respondent.

6.Against the said order dated 18.06.2013 made in I.A.No.25 of 2013 in H.M.O.P.No.12 of 2010, the present Civil Revision Petition is filed by the petitioner.

7.Heard the learned counsel for the petitioner and perused the materials available on record. Though notice is served on the

respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

8.From the materials available on record, it is seen that the respondent filed I.A.No.25 of 2013 to condone the delay in filing the application to set aside the exparte decree of divorce granted in H.M.O.P on the ground that no notice in the H.M.O.P was served on her through Court Amin and alleged that the petitioner manipulated the notice as though it was served on the respondent. The learned Judge considering the materials on record and verifying the records, came to the conclusion that the notice sent through Court by Registered Post with Acknowledgement Due was served on the respondent. After coming to such conclusion, the learned Judge failed to consider the document filed by the petitioner to show that he got married to one Kavitha on 30.11.2012 and respondent has not given any valid reason for the delay of 893 days in filing the application to set aside the exparte decree.

9.Considering these facts, the contention of the learned counsel for the petitioner that the respondent was aware of the proceedings in H.M.O.P and exparte decree earlier and only to harass the petitioner after his marriage with Kavitha has given false

complaint to the police and approached the Court to set aside the ex parte decree of divorce is acceptable. The learned Judge erred in allowing the application in order to give an opportunity to the respondent after coming to the conclusion that respondent received notice and did not appear before the Court and the learned Judge has not given any reason for not accepting the document filed by the petitioner.

10. For the above reason, the order of the learned Judge dated 18.06.2013 made in I.A.No.25 of 2013 in H.M.O.P.No.12 of 2010 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No
gsa

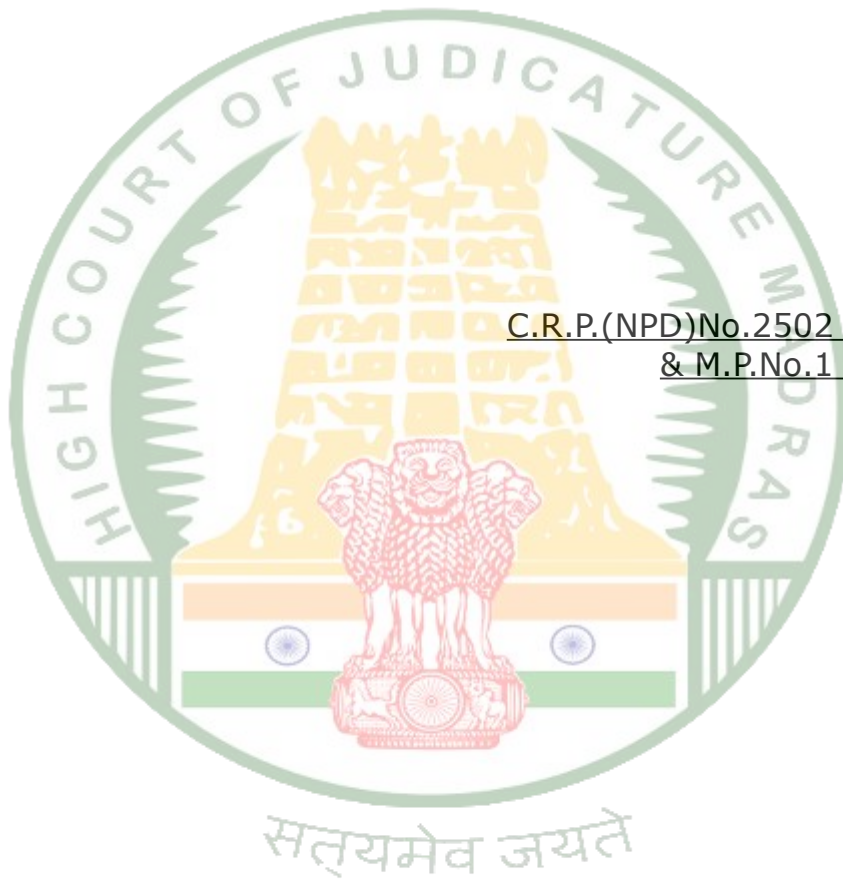
To

The Subordinate Judge,
Dharapuram,
Tiruppur District.

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V.M.VELUMANI, J.

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