

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2691 of 2013

G.Bhaskaran

.. Petitioner

Vs.

B.Jayachitra

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decretal order dated 28.05.2013 made in I.A.No.1365 of 2011 in H.M.O.P.No.1025 of 2010 on the file of the Family Court, Coimbatore.

For Petitioner : Mr.D.Balachandran

For Respondent : Mr.R.Marudhachalamurthy

ORDER

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This Civil Revision Petition is filed against the fair and decretal order dated 28.05.2013 made in I.A.No.1365 of 2011 in H.M.O.P.No.1025 of 2010 on the file of the Family Court, Coimbatore.

2.The petitioner is husband and respondent is the wife in H.M.O.P.No.1025 of 2010 on the file of the Family Court, Coimbatore. The respondent filed the said H.M.O.P for divorce. The petitioner did not appear on 11.04.2011 and was set exparte and exparte decree was passed on 06.05.2011. The petitioner filed I.A.No.1365 of 2011 under Section 5 of Limitation Act to condone the delay of 32 days in filing a petition to set aside the exparte decree. According to the petitioner, he was suffering from illness for the past two months and could not contact his Advocate.

3.The respondent filed counter affidavit and submitted that the petitioner has not given any reason for not appearing on 11.04.2011, when he was set exparte. The petitioner filed the present petition only on 07.07.2011. He has not engaged any Advocate and reason given by him that due to the illness, he could not contact his Advocate is not correct and valid reason to condone the delay. After expiry period of appeal, the respondent got married again on 08.08.2011 and the same was registered on 16.08.2011 on the file of Sub Registrar Office, Pollachi.

4.Before the learned Judge, both the petitioner and

respondent did not let in any oral evidence. The respondent marked Marriage Registration Certificate issued by Sub Registrar, Pollachi dated 16.08.2011 as Ex.R1. The petitioner did not mark any document.

5.The learned Judge considering the averments in the affidavit, counter affidavit and Ex.R1 filed by the respondent, dismissed the application, holding that the reason given by the petitioner is not sufficient and valid to condone the delay.

6.Against the said order of dismissal dated 28.05.2013 made in I.A.No.1365 of 2011 in H.M.O.P.No.1025 of 2010, the petitioner has come out with the present Civil Revision Petition.

7.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

8.From the order of the learned Judge and materials on record, it is seen that the petitioner has filed I.A.No.1365 of 2011 to condone the delay of 32 days on 07.07.2011 stating that he was suffering from illness for past two months and could not contact his Advocate to give instructions. The petitioner was set exparte on

11.04.2011. The petitioner has not given any reason for not appearing on 11.04.2011. The learned Judge considering this fact as well as Ex.R1, the marriage certificate filed by the respondent, dismissed the application. There is irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 28.05.2013 made in I.A.No.1365 of 2011 in H.M.O.P.No.1025 of 2010 on the file of the Family Court, Coimbatore.

9.In the result, this Civil Revision Petition is dismissed. No costs.

Index :: Yes/No
gsa

13.02.2018

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To

The Judge,
Family Court,
Coimbatore.

V.M.VELUMANI, J.

gsa



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