

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2946 of 2013
and M.P.No.1 of 2013

R.Ravikumar

.. Petitioner

Vs.

K.Renuka Devi

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 14.03.2013 made in I.A.No.75 of 2011 in H.M.O.P.No.2 of 2009 on the file of the Subordinate Court, Mannargudi.

For Petitioner : Mr.D.Veerasekaran

For Respondent : M/s.A.Meenakshi Sundaram

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 14.03.2013 made in I.A.No.75 of 2011 in H.M.O.P.No.2 of 2009 on the file of the Subordinate Court, Mannargudi.

2.The petitioner/husband filed H.M.O.P.No.2 of 2009 against the respondent/wife for divorce on the ground of cruelty. The respondent filed counter statement on 22.04.2009 and was

contesting H.M.O.P. Trial commenced. The petitioner filed proof affidavit and H.M.O.P was posted for cross-examination by counsel for respondent. On the day of cross-examination, the respondent did not appear and H.M.O.P was adjourned by three hearings. The respondent did not appear on all the hearings. She was set exparte and exparte decree was passed on 21.07.2010. The respondent filed I.A.No.75 of 2011 to condone the delay of 459 days in filing the petition to set aside the exparte decree. According to the respondent, on 21.07.2010, the respondent was suffering from viral fever and therefore, she could not contact her Advocate to give instructions to cross-examine P.W.1. The delay in filing the petition is neither wilful nor wanton.

3.The petitioner filed counter affidavit and contended that the respondent has not given any reason for the huge delay of 459 days and the reason given by the respondent for non-appearance on 21.07.2010 is only an after thought. The respondent has not produced any document to show that she suffered from viral fever on 21.07.2010.

4.Before the learned Judge, the petitioner let in evidence and marked two documents to show that he married one Krishnaveni,

daughter of K.Kaliyamurthy on 07.10.2011 and the said marriage was registered on 02.12.2011, which was marked as Ex.R1 and produced the marriage certificate. A male child was born on 13.09.2012 in the wed-lock between the petitioner and the said Krishnaveni, daughter of Kaliamoorthy and he produced the birth certificate of the male child, which was marked as Ex.R2. The respondent examined herself as P.W.1 and marked 7 documents as Exs.P1 to P7.

5.The learned Judge considering the averments in the affidavit and counter affidavit, allowed the application on condition that the respondent pays a sum of Rs.1,000/- to the petitioner on or before 25.03.2013.

6.Against the said order dated 14.03.2013 made in I.A.No.75 of 2011 in H.M.O.P.No.2 of 2009, the petitioner has come out with the present Civil Revision Petition.

7.The contentions of the learned counsel appearing for the petitioner are that the respondent did not give any reason for the delay. She has stated that she was suffering from viral fever on 21.07.2010, but did not produce any document to substantiate the

said claim. The learned Judge failed to consider the documents filed by the petitioner that he was married on 07.10.2011 to one Krishnaveni, daughter of K.Kaliyamurthy and a male child was born on 13.09.2012.

8.The learned counsel for the respondent contended that due to the sickness, the respondent could not contact her Advocate and give instructions to cross-examine P.W.1. Only due to the sickness, the respondent could not file the application to set aside the exparte decree in time. The learned Judge has compensated the petitioner by awarding a cost of Rs.1,000/- and the respondent is willing to pay more amount to the petitioner by way of cost and opportunity may be given to the respondent to contest the case on merits.

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

10.From the materials available on record, it is seen that the respondent has stated that she was suffering from viral fever on 21.07.2010, but she has not stated that how long she suffered from viral fever, when she recovered and as to why she has not contacted her Advocate earlier. The learned Judge failed to take

note of the fact that respondent has stated she was suffering from viral fever on 21.07.2010 and has not given any reason for delay of 459 days in filing the application to set aside the exparte decree. In addition to the same, the learned Judge failed to consider the contention of the petitioner that he got married to one Krishnaveni, daughter of K.Kaliyamurthy on 07.10.2011, after one year and three months of exparte decree and a male child was born on 13.09.2012 in the wed-lock between the petitioner and the said Krishnaveni. The petitioner has substantiated this contention by producing the marriage certificate which was registered as well as the birth certificate of the child.

11.The learned Judge has committed an irregularity in not considering the above facts. For the above reason, the order of the learned Judge dated 14.03.2013 made in I.A.No.75 of 2011 in H.M.O.P.No.2 of 2009 is set aside.

12.Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index :: Yes/No
gsa

27.02.2018

V.M.VELUMANI,J.

gsa

To

The Subordinate Judge,
Mannargudi.



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