

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.796 of 2010
& M.P.No.1 of 2010

Sampath

.. Petitioner

Vs.

Thamizhselvi

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 01.10.2009 made in I.A.No.72 of 2007 in H.M.O.P.No.44 of 2006 on the file of the Principal Sub Court, Villupuram.

For Petitioner : M/s.Sumithra Chakkaravarthi

For Respondent : Mr.N.Suresh

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 01.10.2009 made in I.A.No.72 of 2007 in H.M.O.P.No.44 of 2006 on the file of the Principal Sub Court, Villupuram.

2.The petitioner is husband and respondent is wife in H.M.O.P.No.44 of 2006 on the file of the Principal Sub Court, Villupuram. The petitioner filed the said H.M.O.P against the respondent for dissolution of marriage conducted between the petitioner and respondent on 15.09.1977 on the ground of cruelty. After receipt of notice, the respondent did not appear and contest the H.M.O.P. An exparte decree of divorce was granted on 11.12.2006. The respondent filed I.A.No.72 of 2007 under Section 5 of the Limitation Act to condone the delay of 80 days in filing the application to set aside the exparte order dated 11.12.2006. According to the respondent, on receiving the notice in H.M.O.P, she was mentally affected and fell ill with fever and affected by jaundice and was taking native treatment in her village. The respondent was advised by the doctor not to go in the sun light for 3 or 4 months and therefore, she could not contact Advocate and conduct the case.

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3.The petitioner filed counter affidavit and denied all the allegations made by the respondent and submitted that the respondent has not given any details as to from when she suffered

out of fever and Jaundice and denied other allegations. The petitioner contended that after the period of appeal, he got married to one Dhanalakshmi @ Dhanam on 28.03.2007 at Arulmigu Sengazhuneeramman Temple at Pondicherry. Only after knowing the petitioner's marriage with said Dhanam, the respondent has come out with the present application to harass the petitioner.

4. Before the learned Judge, the petitioner examined himself as R.W.1 and respondent examined herself as P.W.1. Both the petitioner and respondent have not filed any documents.

5. The learned Judge after extracting the averments in the affidavit and counter affidavit, allowed the application in order to give an opportunity to the respondent to contest the matter on merits and imposed cost of Rs.500/- payable to the petitioner.

6. Against the said order dated 01.10.2009 made in I.A.No.72 of 2007 in H.M.O.P.No.44 of 2006, 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 impugned order of the learned Judge, it is seen that the respondent has not given any particulars with regard to her illness. The petitioner has stated in his counter affidavit that respondent has not given the date on which she suffered from illness and when she recovered. He has also stated in the counter affidavit that after expiry of the period of appeal, he got married to one Dhanalakshmi @ Dhanam on 28.03.2007. The learned Judge held that petitioner has not filed any documents. The learned Judge also held that even though the reasons given by the respondent are not acceptable, in order to give an opportunity to the respondent to contest the matter on merits, allowed the application and held that no prejudice will be caused to the petitioner, if the application is allowed. All the above reasons, given by the learned Judge are not valid reason. The learned Judge has not properly considered the contention of the petitioner that he got married to one Dhanalakshmi @ Dhanam, after decree of divorce and after the expiry of period of appeal. The petitioner was examined himself with regard to this aspect. The learned Judge, after holding that the

reason given by the respondent to condone the delay is not acceptable, erred in holding that in allowing the application to condone the delay, no prejudice would be caused to the petitioner. It is well settled that a delay can be condoned only when parties give valid and acceptable reason for condoning the delay. The intention of the parties must be bonafide. In view of the above well settled judicial pronouncements, the impugned order of the learned Judge dated 01.10.2009 made in I.A.No.72 of 2007 in H.M.O.P.No.44 of 2006 is liable to be set aside and is hereby set aside.

9.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous petition is closed.

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Index :: Yes/No
gsa

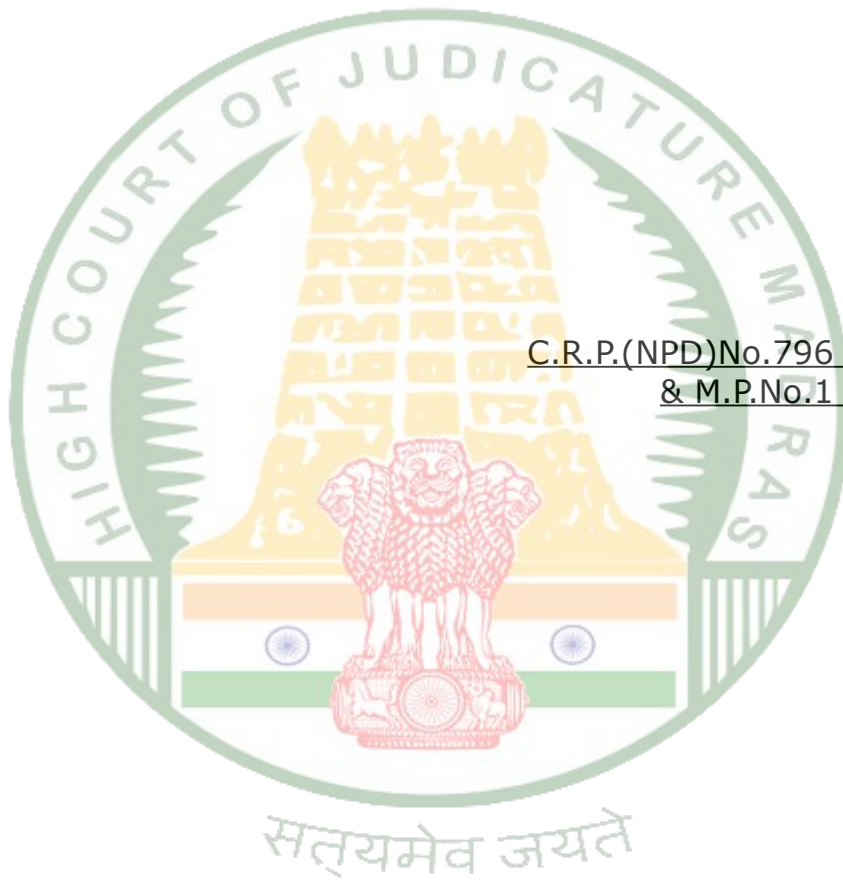
To

The Principal Sub Judge,
Villupuram.

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V.M.VELUMANI, J.

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