



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.M.A.(MD).Nos.979 and 980 of 2016

Buvanasundari ... Petitioner/Petitioner/ Respondent

Vs.

Ramakrishnan .. Respondent/Respondent/Petitioner

PRAYER: These civil miscellaneous appeals have been filed under Order 43 Rule 1 of C.P.C., to set aside the order and decreetal order dated 08.09.2011 made in I.A.Nos.108 and 107 of 2009 in H.M.O.P.No.78 of 2004 on the file of the Sub Court, Dindigul.

For Petitioner : Mr.S.R.Suresh Kumar

For Respondent : Mr.C.Jeyaprakash

O R D E R

These civil miscellaneous appeals are directed against the fair order and decreetal order dated 08.09.2011 made in I.A.Nos.108 and 107 of 2009 in H.M.O.P.No.78 of 2004 on the file of the Sub Court, Dindigul.

2.The case of the appellant is that the marriage between the appellant and the respondent was solemnised on 13.03.1995 at Madurai. Due to their wedlock, they gave birth to a male child on 08.09.1996. While being so, the appellant was driven out from the matrimonial home on the charge of adultery in the year 2002. Thereafter, the respondent filed divorce petition in H.M.O.P.No.78 of 2004 before the Principal Sub Judge, Dindigul on the ground of adultery. Since the appellant remained absent, she was set exparte and decreed the divorce petition and granted dissolving of marriage on the ground of adultery as well as cruelty as against the appellant. Thereafter, the respondent got remarried and living separately with his son. Thereafter, with a delay of 1172 days, the appellant filed petition to set aside the exparte decree of divorce in I.A.No.107 and 108 of 2009. The said petitions were dismissed by an order dated 08.09.2011 and the decree of divorce was confirmed and became final. Against the said orders, the appellant filed these civil miscellaneous appeals.



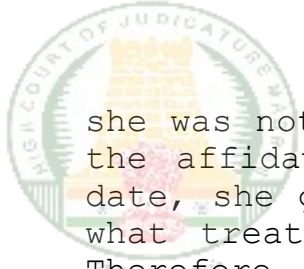
3.The learned counsel appearing for the appellant would contend that after receipt of notice in H.M.O.P.No.78 of 2004, the appellant engaged one counsel to appear on behalf of herself. The letter sent by her counsel was not received by her and as such, she was not able to appear before the Court. He further contended that the appellant suffered with arthritis and as such, she was not able to walk and not able to travel. After treatment, she enquired about her case with her counsel and only thereafter, she came to understand that exparte decree was granted in favour of the respondent. As such, she explained the delay in a proper manner by filing condone delay petition and even then, the Court below failed to appreciate the same. Further, he would submit that still the appellant wanted to live with the respondent and she has no other relationship with anybody. Hence, he prayed to set aside the order passed by the Court below.

4.The learned counsel appearing for the respondent would contend that there is a delay of 1172 days in filing the set aside petition and there are absolutely no sufficient reasons for the delay in filing the set aside petition. In fact, the appellant is well within the knowledge of the order passed by the Court below. Thereafter, the respondent got married with one Lakshmi, daughter of Marappa Gounder in the year 2007 and he is living with his son. Considering the said facts, the Court below dismissed the petitions filed by the appellant herein and hence, he sought for dismissal of the petitions.

5.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on records.

6.Admittedly, the appellant got married with the respondent and gave birth to a male child. The appellant herself left the matrimonial home and deserted the respondent and her only son and lead as adulterous life with one Kamaraj. Therefore, the respondent filed divorce petition on the ground of adultery and cruelty in H.M.O.P.No.78 of 2004 and it was decreed in favour of the respondent by the decree dated 14.03.2006. Thereafter, the respondent also got married with another woman and living with his son. He also filed a guardianship petition in G.W.O.P.No.77 of 2003 on the file of the District Court, Dindigul, thereby he was declared as guardian of their minor son and also restrain the appellant from interfering with the life of the petitioner herein by the decree dated 19.09.2003. While so, the respondent filed a petition to set aside the decree of divorce along with condone delay petition in I.A.Nos.107 and 108 of 2009 before the Principal Sub Court, Dindigul. The said petitions were also dismissed by the common order dated 08.09.2011.

7.though the appellant stated that the reason for the delay was that she suffered with arthritis on her both legs and as such,



she was not able to walk and travel to see her counsel. Perusal of the affidavit would show that she did not even whisper from what date, she got treatment and what type of arthritis she suffered and what treatment she had taken and there are bereft of materials. Therefore, the delay of 1172 days in filing the set aside petition was not properly explained and hence, the Court below has rightly dismissed the petitioner for condoning the delay as well as the set aside petition. This Court finds no infirmity or irregularity in the order passed by the Court below to interfere with the same.

8. In view of the above, these civil miscellaneous appeals are dismissed and the orders dated 08.09.2011 made in I.A.Nos.108 and 107 of 2009 in H.M.O.P.No.78 of 2004 on the file of the Sub Court, Dindigul are confirmed. No costs.

Sd/

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar(CS-II)

To

The Subordinate Judge, Dindigul.

+1cc to Mr.S.R.Suresh Kumar, Advocate, SR.No.86273

C.M.A. (MD) Nos.979 and 980 of 2016
24.09.2018

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