



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.147 of 2018

and

C.M.P. (MD) No.633 of 2018

Thangamariammal

... Petitioner

Vs.

Vairavan @ Vairamuthu

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India to allow this Civil Revision Petition thereby to set aside the order dated 26.09.2017 made in I.A.No.127 of 2017 in H.M.O.P.No.120 of 2016 on the file of the Learned Family Court, Srivilliputhur.

For Petitioner : Mr.T.Antony Arul Raj
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order dated 26.09.2017 made in I.A.No.127 of 2017 in H.M.O.P.No.120 of 2016 on the file of the Learned Family Court, Srivilliputhur.

2.The petitioner who is the respondent / wife in H.M.O.P.No.120 of 2016 pending on the file of the Family Court, Srivilliputhur, filed the present Civil Revision Petition, challenging the order in I.A.No.127 of 2017 which was filed for condoning the delay of 30 days in filing the application to set aside the ex-parte order dated 13.04.2017.

3.Heard the learned counsel for the petitioner. Though notice was served on the respondent / husband and his name was also printed in the cause list, no representation for the respondent.

4.Admittedly, the petition in H.M.O.P.No.120 of 2016 was filed by the respondent / husband for the relief of divorce, which was set ex-parte on 13.04.2017. The petitioner is the wife, filed the application for setting aside the ex-parte order with the delay of 30 days. The learned Judge without considering the nature of the H.M.O.P. filed by the respondent / husband, had simply dismissed the application by stating that the petitioner has not filed the application for setting aside the ex-parte order within the time limit. The learned Judge also states that for the delay of 30 days, she has not given any valid reason.

<https://hcservices.ecourts.gov.in/hcservices/>

5.The learned Judge also stated in his order that the Court



cannot approach the application with sympathy on the petitioner, since she is uneducated and no merits in the application to condone the delay. Therefore, he dismissed.

6. The order of the learned Judge is totally vague and he has not applied his judicial mind. Since this Court and the Hon'ble Apex Court categorically held that the Courts should apply its mind while considering the application filed under Section 5 of the Limitation Act liberally. Admittedly, in this case, this is a very meagre delay of 30 days only, the petitioner has filed this application. The learned Judge also has not given any valuable reason for dismissing the application except saying that the petitioner has not given any valid reason for the delay of 30 days. Therefore this Court warrants to interfere with the order passed in I.A.No.127 of 2017 in H.M.O.P.(MD)No.120 of 2016 dated 26.09.2017.

7. In the result,

(a) This Civil Revision Petition is allowed by setting aside the order passed in I.A.No.127 of 2017 dated 26.09.2017 passed by the learned Judge, Family Court, Srivilliputhur.

(b) The learned Judge, Family Court, Srivilliputhur is directed to number the application filed for setting aside the ex-parte order dated 13.04.2017 and pass orders by giving notice to the respondent within a period of one month from the date of receipt of a copy of this order and on passing order in the setaside petition, the learned judge is directed to dispose of the H.M.O.P.No.120 of 2016 within a period of three months thereafter.

(c) No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Judge,
Family Court,
Srivilliputhur.

+1CC to Mr.T.Antony ArulRaj, Advocate in SR.NO.60509.

PNN
DS/JC/SAR-1 :14.05.2018: 2P/3C