



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(PD)(MD) No.1120 of 2018 and
CMP(MD).No.4813 of 2018

Mahalakshmi

... Petitioner/Petitioner / respondent

-vs-

Jeyakumar

... Respondent /Respondent / petitioner

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.178 of 2016 in HMOP.No.330 of 2014, dated 28.12.2017 on the file of the Family Court, Thiruchirappalli.

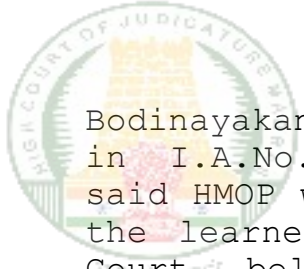
For Petitioner : Mr.V. Manikandan
For Respondent : Ms.Lakshmi Gopinathan
for M/s. Polax Legal Solutions

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.178 of 2016 in HMOP.No.330 of 2014, dated 28.12.2017 on the file of the Family Court, Thiruchirappalli.

2. The respondent herein, who is the husband, has filed HMOP.No.330 of 2014, on the file of the Family Court, Thiruchirappalli, for divorce, and in the said HMOP, the revision petitioner herein / wife was set ex parte and ex parte order was passed on 22.05.2015. In such circumstances, the revision petitioner / wife has filed an application in I.A.No.178 of 2016, to condone the delay of 337 days in filing an application to set aside the ex parte decree passed in HMOP.No.330 of 2014 and the same was dismissed on the ground that no proper reasons have been assigned in approaching the Court. Challenging the said order, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that the petitioner knew the ex parte order passed in the HMOP.No.330 of 2014, only at the time of marking the cross examination in M.C.No.9 of 2013, which was filed by the petitioner, pending on the file of the learned Judicial Magistrate,



Bodinayakanoor. Thereafter, the petitioner has filed an application in I.A.No.178 of 2016 to set aside the ex parte order passed in the said HMOP with a delay of 337 days and the same was dismissed by the learned Judge, Family Court, Thiruchirappalli. However, the Court below, without properly appreciating the facts and circumstances, has simply dismissed the application instead of condoning the delay and hence, she has filed the present Civil Revision Petition.

4. Learned counsel appearing for the respondent has contended that the the delay in preferring the application for setting aside the ex parte decree has not been properly explained. The Trial Court had carefully examined all the material particulars before rendering its findings and delivered the judgment. The revision petitioner, in support of her contention has not produced any proof therefor and therefore, finding no valid ground or reasons to condone the delay, the Court below has dismissed the application. Hence, there is no error in the order of dismissal passed by the Court below and the petition is liable to be dismissed in limine.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent. This Court also perused the material documents available on record.

6. It is well settled principles of law that application to condone the delay must be considered liberally and length of delay is not a criteria. The party must be given sufficient reasons for condoning the delay and the intention of the party must be bona fide and they must be given an opportunity to put forth their case on merits and should not be shut out at the threshold itself.

7. Keeping in mind the same, if the present case is looked into, this Court is of the view that the petition ought to be allowed and the order, dated 28.12.2017 passed in I.A.No.178 of 2016 in HMOP.No.330 of 2014 on the file of the Family Court, Thiruchirappalli, is liable to be set aside, subject to certain conditions.

8. In the result,

(i) this Civil Revision Petition is allowed by setting aside the order, dated, 28.12.2017 passed in I.A.No.178 of 2016 in HMOP.No.330 of 2014 on the file of the Family Court, Thiruchirappalli, and the application in I.A.No.178 of 2016 is allowed and the delay is condoned.

(ii) The learned Judge, Family Court, Thiruchirappalli, is directed to number the set aside application and pass orders on the same within a period of two weeks from the date of receipt of a copy of this order, by giving notice to both parties.

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

(iii) In the event of allowing the said application, the



learned Judge, Family Court, Thiruchirappalli, is directed to proceed with the HMOP and dispose of the same within a period of four months, thereafter.

(iv) No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-I)

To:

The Judge,
Family Court,
Thiruchirappalli.

+1CC to M/s. Polax Legal Solutions in SR.No.74200.

+1CC to Mr.V.Manikandan Advocate in SR.No.73957.

TRP

DS/SKN/SAR-1 :20.08.2018: 3P/4C

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