



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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C.R.P. (MD) (PD) No.1442 of 2018

and

C.M.P. (MD) No.6237 of 2018

Vanaja

/Vs./

Somasundaram

... Petitioner/Respondent/Petitioner

... Respondent/Petitioner/Respondent

Prayer: Civil Revision Petition - filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.18 of 2015 in H.M.O.P.No.76 of 2003 by the Sub Court, Palani, dated 28.11.2017.

For Petitioner

: Mr.T.Mohan

for M/s.D.Venkatesh

For Respondent

: Mr.T.Lenin Kumar

ORDER

H.M.O.P.No.76 of 2003 on the file of the Sub Court, Palani was instituted by the revision petitioner herein for dissolving her marriage with the respondent. The marriage had taken place as early as on 22.02.1988. Two daughters were born through the said wedlock. Alleging that the respondent, who was then employed in Army Medical Corps and posted in North India had developed certain bad habits and alleging cruelty on his part, the said HMOP was instituted. An exparte order of divorce was granted on 14.07.2004. The respondent took steps to have the said order set aside. But then, there was a delay of 4010 days in filing the set aside application. To condone the delay, the respondent filed I.A.No.18 of 2015. By order dated 28.11.2017, the Court below allowed the said IA. Questioning the correctness of the same, this civil revision petition has been filed.

2. Heard the learned counsel appearing on either side.

3. The learned counsel appearing for the respondent contended that the order condoning the delay deserves to be sustained. He pointed out that cogent reasons have been assigned by the Court below for allowing the said IA. He further contended that the revision petitioner herein obtained the order of divorce by playing fraud. During the relevant point of time, the respondent herein was employed in Saudi Arabia and that therefore, the Court below held that the mandate set out in Order 5 Rule 25 CPC will apply. He also drew the attention of this Court to the receipt of Rs.1,00,000/-



sent by the respondent to the revision petitioner in June 2008 and April 2009. The wedding of the elder daughter was celebrated in May 2014 and the group photograph shows that the parties herein stood next to each other with smiling faces. He therefore wanted this Court to dismiss the civil revision petition as devoid of any merit.

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4. I am unable to agree with the contention urged by the learned counsel appearing for the respondent.

5. As rightly pointed out by the learned counsel appearing for the revision petitioner, the delay occasioned in filing the set aside petition is inordinate. The delay has stretched to 4010 days. An exparte order of divorce was passed on 14.07.2004. For setting aside the same, I.A.No.18 of 2015 was filed only on 08.07.2015. To condone such a gross delay, sufficient cause ought to be made out.

6. This Court went through the contents of the affidavit filed in support of I.A.No.18 of 2015. The respondent herein states in the said affidavit that he had gone away to Saudi Arabia as a Pharmaceutical Assistant on 14.01.2004 and that without effecting service of notice on him, an exparte order has been obtained. He became aware of the same through his counsel and thereafter, he filed the set aside application. Since he was away due to his overseas employment, he was not aware of the developments.

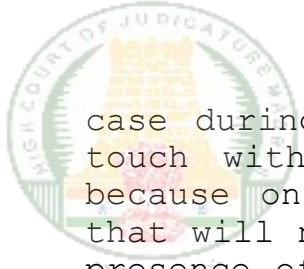
7. Excepting the aforesaid few sentences, there is absolutely nothing in the affidavit filed in support of the set aside application. The Court below erroneously invoked Order 5 Rule 25 CPC. The said provision reads as under:

25. Service where defendant resides out of India and has no agent.:-

Where the defendant resides out of India and has no agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him [or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail Service or by any other means as may be provided by the rules made by the High Court] if there is postal communication between such place and the place where the Court is situate:"

8. In this case, the respondent had gone on an overseas employment to Saudi Arabia in July 2004. He had come back to India in March 2013. Merely because the respondent herein had worked abroad for a certain number of years that would not mean that he had taken residence there. Definitely, the respondent herein would have been given periodical holidays.

9. It is not a case of the respondent that he intimated the revision petitioner herein about his proposal to go to Saudi Arabia. It is not his case that the revision petitioner was furnished with his address for communication. It is not even his



case during the period from January 2004 to March 2013, he was in touch with the revision petitioner on a regular basis. Merely because on two occasions, certain monetary remittances were made, that will not go to advance the case of the respondent herein. The presence of the respondent herein on the occasion of the wedding of the elder daughter will also not bolster his case. Divorce can take only between the petitioner and the respondent. That would not mean that the relationship between the father and the daughter has snapped. The fact that the petitioner and the respondent were standing next to each other with smiling faces goes to show that both believed in observing basic manners and civility. That will not weaken the case of the revision petitioner herein.

10. The Court below erred in invoking Order 5 Rule 25 CPC because that will apply, only if the respondent herein had resided out of India and had no agent in India. Here, the respondent was in Saudi Arabia only with work permit and, he had not intimated to the revision petitioner about his immigration to Saudi Arabia or furnished his address for communication. Therefore, the petitioner could have served the summons only on the last known address of the respondent.

11. I am of the view that the Court below ought not to have invoked Order 5 Rule 25 CPC. The delay is long and inordinate. Absolutely, there is no reason set out in the affidavit filed in support of the condone delay petition. The Court below clearly got erred in allowing the condone delay petition. The order impugned in this civil revision petition is set aside. Accordingly, this civil revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Sub Judge, Palani.

+1cc to Mr.D.Venkatesh,Advocate Sr.No.99613
+1cc to Mr.T.Leninkumar,Advocate Sr.No.89473

SM

KM/BK/SAR2/21.12.2018/3P/4C

Order made in
C.R.P. (MD) (PD) No.1442 of 2018
09.10.2018