

SMT JUSTICE T. RAJANI

CIVIL REVISION PETITION No.1410 of 2018

ORDER:

This civil revision petition is filed by the petitioner aggrieved by the order dated 23.11.2017 in IA.No.87 of 2016 in OP.No.1 of 2014, by virtue of which the Court below condoned the delay of 366 days in preferring the petition, which was filed seeking to set aside the *ex parte* decree of divorce.

2. Heard the counsel for the petitioner. None appears for the respondent in spite of notice.

3. The counsel for the petitioner submits that the order of the Court below on the face of it is unsustainable, as, except recording the contents of the petition and the affidavit filed by the petitioner therein, did not seek for any supporting evidence for the reasons stated in the petition.

4. The reasons stated in the petition, as can be seen from the order, are that the petitioner therein is pursuing Central Teacher Eligibility Test at Hyderabad and thereafter, she suffered from ill health. It appears that without any supporting document for either of the two grounds, the Court allowed the petition.

5. The counsel for the petitioner, in support of her contention that delay cannot be condoned with there being, sufficient cause for the delay and explanation for each day's delay, relies on a decision of the

Supreme Court in *PARIMAL v. VEENA*¹ wherein it was observed that Order 9 Rule 13 of the Civil Procedure Code makes it obligatory for the Court not to interfere with an *ex parte* decree unless it meets the statutory requirement. It was also observed that the issue of service of summons or whether there was sufficient cause for wife not to appear before the Court has to be dealt with and finding to be recorded. The other decision relied upon by the counsel is rendered by a Division Bench of this Court in *LOKESHWARI v. SRINIVASA RAO*² is also to the same effect. Further, the counsel contends that there was a customary divorce and after the said customary divorce and the decree of the Court, the petitioner got married.

6. Hence, considering the above facts, this Court opines that the order of the Court below needs to be set aside.

Hence, the civil revision petition is allowed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed. There shall be no order as to costs.

August 24, 2018
DSK

T. RAJANI, J

¹ (2011) 3 SCC 545

² 2000 LAW SUIT (AP) 75