

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.820 OF 2018

ORDER:

The present Criminal Revision Case is filed questioning the orders passed in CrI.M.P.No.286 of 2017 in M.C.No.52 of 2012 on the file of the Court of Judge, Family Court at Secunderabad, dismissing the application filed under Section 5 of the Limitation Act to condone the delay 399 days in filing the petition to set aside the orders dated 12.10.2012 passed in the M.C.

Heard the learned counsel for the petitioner. Though notice is served on the respondent No.1, she has not chosen to appear either in person or by engaging any counsel.

The brief facts of the case are that the respondent No.1 filed M.C.No.52 of 2012 against the petitioner herein claiming a sum of Rs.50,000/- per month towards maintenance and Rs.20,000/- as legal expenses, on the file of Judge, Family Court, Secunderabad. It is her case that her marriage with the petitioner was performed on 30.04.1986 at Secunderabad as per Hindu rites and customs. After the marriage, she joined the petitioner and the marriage was consummated. The petitioner and his family members started harassing the respondent No.1 by demanding additional dowry from her parents. The harassment caused by the petitioner and his family members increased day-by-day and having no alternative, she filed a complaint against them under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. On the advice of the elders, she compromised with the petitioner and his family members and her father gave amounts to the petitioner for

purchase of a house bearing No.12-1-1316, situated at Shantinagar, Lalapet, Secunderabad and the same was purchased in the name of the petitioner. After purchase of the said house, the petitioner continued his harassment. Subsequently, the respondent No.1 came to know that the petitioner is having an illegal affair with one lady by name Rajeshwari. The petitioner has also stolen the documents of the house, cash and jewellery worth of Rs.1,50,000/- from her possession. In the mediation held on 05.12.2005 to resolve the dispute between the petitioner and respondent No.1, an agreement was signed by both the parties, whereunder the petitioner agreed to lead happy marital life with the respondent No.1. As there was no change in the attitude of the petitioner, the respondent No.1 filed the above M.C. However, as the petitioner has not appeared in the said M.C., he was set ex parte and the learned Judge was pleased to pass orders on 12.10.2012 fixing the maintenance at Rs.20,000/- per month and a sum of Rs.10,000/- towards legal expenses. The learned Judge also directed that the monthly maintenance amount shall be deposited in the account of respondent No.1 on or before 10th of every succeeding month commencing from November, 2012. After coming to know about the passing of the said orders, the petitioner filed M.P.No.286 of 2017 under Section 5 of Limitation Act seeking condonation of delay of 399 days in filing the petition to set aside the ex parte order passed in the M.C., dated 12.10.2012.

The respondent No.1 herein filed a counter in the M.P.No.286 of 2017 stating that after receipt of the notices from the Court, the petitioner did not prefer to appear and as such he was set ex parte. In fact, before the ex parte orders are passed, the

petitioner was given ample opportunities to appear and contest the matter, but however, he did not choose to appear and contest the M.C. In fact, even during the subsistence of her marriage, the petitioner contracted the second marriage. The total arrears to be paid towards maintenance is about Rs.11.00 lakhs.

The Court below, after hearing, was pleased to dismiss the M.P. by orders dated 12.02.2018 holding that the petitioner could not avail the opportunities offered to him from 19.9.2012 to 12.10.2012 and the sickness on 12.10.2012 would not have restrained him to appear before the Court on 19.9.2012 and 03.10.2012. Aggrieved by the same, the present revision is filed.

The learned counsel appearing for the petitioner submitted that the Court below dismissed M.P.No.286 of 2017 for condonation of delay without giving any valid reasons. The Court below ought to have appreciated the fact that the petitioner is only a mutton vendor and he has to maintain his wife and children out of the said income. In fact, the petitioner purchased a house bearing No.12-1-1316 to an extent of 254 sq.yds. with a plinth area of 250 sq.feet RCC roof on the name of the petitioner and the respondent No.1 from the funds of the petitioner. In the said house, at present, the respondent No.1 is residing and enjoying the same and receiving rents from the tenants to the tune of Rs.16,000/- per month. The counsel for the petitioner also submitted that the respondent No.1 has let out the portions of the house in favour of A.Vinod and S.Vinod Baliya, Smt.Bala Lakshmi, Babu and T.Santosh and getting rents to the tune of Rs.16,000/- per month. In fact, the respondent No.1 herein filed O.P.No.168 of

2011 seeking divorce from the petitioner on the file of Judge, Family Court, Secunderabad and the same was allowed on 06.02.2012 by nullifying the marriage that took place between them. In spite of the same, the respondent No.1 filed the present M.C. against him claiming maintenance at the rate of Rs.50,000/- per month. In fact, while awarding the maintenance, at the time of passing the ex parte orders, the Court below failed to see that the petitioner does not have sufficient means to pay the said amount. On the other hand, the respondent No.1 in the cross-examination in F.C.O.P.No.32 of 2015, admitted about her staying in the house of the petitioner and receiving rents to the tune of Rs.9,000/- per month. Therefore, the learned counsel requested this Court to give an opportunity to him to contest the M.C.

Having heard the learned counsel for the petitioner and a perusal of the material available on record would disclose that initially an ex parte order was passed against the petitioner granting maintenance at the rate of Rs.20,000/- per month on 12.10.2012. A perusal of the said order would reveal that there is absolutely no appreciation with regard to the avocation of the petitioner herein and his financial capacity to fix up the maintenance. Though the petitioner herein was set ex parte, the learned Judge is bound to appreciate the financial capacity of the petitioner while awarding the maintenance. Except stating that the respondent No.1 filed her chief affidavit and marked Exs.A.1 to A.4, which are only the legal notices and the marriage photo, nothing is placed on record. The order does not indicate that the petitioner is earning a sum of Rs.1,00,000/- per month. In these circumstances, this Court feels that the order under revision does

not merit consideration and is liable to be set aside. However, at the same time, this Court is conscious of the fact that the petitioner herein was negligent in prosecuting the case. Though he has taken a plea that he was suffering with illness, he could not place any record before the Court below, as observed from the impugned order. In these circumstances, this Court feels, ends of justice would be met if the petitioner is given an opportunity to contest the case subject to certain terms.

Accordingly, the Criminal Revision Case is allowed setting aside the orders passed in M.P.No.286 of 2017 in M.C.No.52 of 2012 dated 12.02.2018 on the file of Judge, Family Court, Secunderabad and thereby condoned the delay of 399 days subject to the petitioner depositing a sum of Rs.1,00,000/- to the credit of M.C.No.52 of 2012 within a period of six weeks from the date of receipt of a copy of this order. Further the petitioner is directed to pay a monthly maintenance at the rate of Rs.7,500/- per month to the respondent No.1 till the disposal of the M.C. The arrears of maintenance shall also be calculated at the above said rate. In default of compliance of this order within the stipulated period as indicated above, this order automatically stands cancelled.

Pending miscellaneous petitions, if any, shall stand closed.

P.KESHA VA RAO,J

06th JULY 2018.
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