

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.1215 OF 2018

ORDER:

This Criminal Revision Case is filed questioning the orders passed in CrI.M.P.No.799 of 2017 in M.C.No.385 of 2015, dated 24.01.2018 on the file of the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, dismissing the petition filed under Section 5 of the Limitation Act to condone the delay of 433 days in filing the petition to set aside the ex parte orders dated 05.02.2016.

Heard the learned counsel for the petitioner. Though the respondents 2 and 3 are being represented by a counsel, there was no representation on 10.07.2018 and even today.

The facts, in brief, are that the respondents 2 and 3 herein filed M.C.No.385 of 2015 against the petitioner herein before the Court below claiming a sum of Rs.40,000/- per month towards maintenance for both of them. The said M.C. was allowed in part on 05.02.2016 awarding maintenance of Rs.10,000/- and Rs.6,500/- per month to the respondents 2 and 3 respectively, from the date of the petition i.e. 28.10.2015. It appears, pursuant to the said orders, the respondents 2 and 3 filed CrI.M.P.No.708 of 2016 for payment of arrears. In fact, in the main M.C. as well as in the above said CrI.M.P., notices sent to the petitioner herein were returned with an endorsement 'left without intimation'. The Court below taking the said endorsement as deemed service, proceeded with the case and passed ex parte orders in the main

M.C. fixing the maintenance against the petitioner at the above rate. In fact, the Court below in CrI.M.P.No.708 of 2016 filed for payment of arrears of maintenance, issued Non-bailable Warrant against the petitioner. When the said Warrants are sought to be served on the petitioner herein, he came to know that the order has been passed against him in M.C.No.385 of 2015. Immediately, he filed a petition in CrI.M.P.No.799 of 2017 to condone the delay of 433 days in filing the petition to set aside the ex parte order dated 05.02.2016. The said petition was dismissed by the Court below by orders dated 24.01.2018. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel for the petitioner would contend that no notice has been issued to the petitioner in the M.C. as well as in the CrI.M.P.No.708 of 2016 filed by the respondents 2 and 3 claiming the arrears of maintenance. In fact, in the M.C. as well as in the said CrI.M.P., treating the postal endorsement that 'the addressee left without intimation', as deemed service, the Court below proceeded with the case. The learned counsel also pointed out from the record that the respondent No.2 herself in the M.C. has categorically stated that the petitioner herein has been living with a woman at Bahadurpura, Hyderabad and only visiting their joint family at Chelapura, Hyderabad. In spite of the same, in the cause title, the address of the petitioner has been shown as H.No.21-3-666, Chelapura, Imlika Jahad, Hyderabad. This fact makes it clear that purposefully the address of the petitioner herein has been wrongly mentioned by the respondent No.2 and obtained an ex parte order. Under the guise of the ex parte order, petition for payment of arrears has been filed. In the said petition,

N.B.Ws. have been issued. Therefore, he sought to set aside the ex parte order passed against him on 05.02.2016.

Having heard the counsel for the petitioner and after going through the record, the undisputed facts are that the notice on the petitioner is not served either in the M.C. or even in CrI.M.P.No.708 of 2016 filed for payment of arrears of maintenance. In both the petitions, the endorsement of the postal authorities 'left without intimation' is treated as deemed service. In this regard, it is to be observed that the endorsement 'left without intimation' will not amount to deemed service of notice. On the other hand, the respondent No.2 herself in her petition has stated that the petitioner has been living with another woman at Bahadurpura, Hyderabad. However, purposefully, his address has been shown at Chelapura, Hyderabad. So, this fact clearly establishes that the respondent No.2 wanted to avoid service of notice on the petitioner and under the guise of getting an order, wanted to claim maintenance. Therefore, it is established that the notice is not served on the petitioner and he came to know about passing of the ex parte orders and issuance of warrants only on coming to know from the concerned police that warrants have been issued, immediately, he filed CrI.M.P.No.799 of 2017 to condone the delay of 433 days in filing the petition to set aside the ex parte order dated 05.02.2016.

In these circumstances, this Court is of the opinion that the petitioner has sufficiently explained the delay of 433 days in filing the petition to set aside the ex parte order dated 05.02.2016. Further with regard to the observation of the Court below that the

petitioner has not filed any rental agreement or the affidavit of the previous owner that he is not living at Chelapura, when the respondent No.2 herself has mentioned in the M.C. that the petitioner has been living with another woman at Bahadurpura, Hyderabad, non-filing of the rental agreement or an affidavit of the previous owner to the effect that the petitioner is not living at Chelapura does not make any difference. As such, the petitioner has properly explained the delay of 433 days in filing the petition to set aside the ex parte order dated 05.02.2016.

Accordingly, the Criminal Revision Case is allowed setting aside the orders dated 24.01.2018 and CrI.M.P.No.799 of 2017 in M.C.No.385 of 2015 shall stand allowed condoning the delay of 433 days in filing the petition to set aside the ex parte orders dated 05.02.2016 in M.C.No.385 of 2015.

Pending miscellaneous petitions, if any, shall stand closed.

16th JULY 2018.
Tsr

P.KESHAVA RAO,J