

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CRP Nos. 2786 and 2791 of 2018

COMMON ORDER: (Per Hon'ble Ms. Justice J. Uma Devi)

Assailing the orders passed by the Sub-Divisional Magistrate & Special Assistant Agent to Government, Mobile Court, Bhadrachalam dismissing IA No. 248 of 2014 and IA No. 249 of 2014 in OP No. 17 of 2009 which are filed under Section 5 of the Limitation Act and under Order 9, Rule 13 of C.P.C., the present revision petitions are filed by the petitioner therein.

Initially CRP No. 2791 of 2018 which arose out of the dismissal of the order passed in an interlocutory application for setting aside the exparte decree of dissolution of marriage alone was posted before the Division Bench. After it was brought to the notice of the Division Bench that another revision petition in CRP No. 2786 of 2018 which arose out of the dismissal of the interlocutory application filed for condonation of (253) days in filing of the application for setting aside the exparte decree was posted before a learned Single Judge, the office was directed to get appropriate orders from the Hon'ble the Chief Justice for posting of CRP No. 2786 of 2018 along with CRP No. 2791 of 2018, as both these revision petitions arose out of the same matrimonial dispute. Thus these revision petitions came before us for disposal.

Before starting our discussion on the issues involved in the case, we feel it appropriate to state the chequered history of the case.

The respondent filed HM OP No. 17 of 2009 seeking divorce as against the revision petitioner on the grounds of cruelty and desertion and that she is not interested in conjugal life. The revision petitioner was served with notice, she engaged a counsel by name Sri Salman Raju and later changed the counsel. As no counter was filed in the divorce petition, she was set exparte and an exparte decree of divorce was passed against her on 17.4.2013. The exparte order dated 17.4.2013 reads as under,

“Case called. P.C. present. R.C. absent and respondent also not present. Several chances were given to file counter, but not filed in spite of several chances. Respondent made exparte and the petition is allowed as prayed for.”

Some time after passing of the aforementioned exparte decree of divorce, IA No. 248 of 2014 was filed by the revision petitioner seeking to set aside the exparte decree passed against her. As there was delay in filing of the said application, another IA No. 249 of 2018 was filed under section 5 of the Limitation Act seeking to condone the delay of (253) days in filing of the said application for setting aside the exparte decree of divorce passed against her. Upon contest of those applications by the respondent, they were allowed by the Sub-Divisional Magistrate & Special Assistant Agent to Government by passing an elaborate order. The said order dated 26.9.2014 reads as under,

“Perused the records and observed that, there is a delay of 253 days. The cause shown by the petitioner herein is due to demise of her father and consequent of her ill-health supported by documentary evidence.

Since the matter pertaining to the pertaining to the matrimonial life of the petitioner and who not obtained the opportunity of being heard due to the failure of her counsel to communicate the hearings and which discloses the docket orders dated 17.4.2013, where one Sri P.R. Thirumala Rao, Advocate, who filed vakalat for the respondent/petitioner as per docket order dated 13.12.2012.

On perusal, the docket of the case file reveals that, the defendant counsel has neither preferred to file counter nor present on the day of hearings. Further, it is also noticed that, the D.C. never reported to this Court that, he does not have any instructions from his client for not submitting the counter or represent the case.

Therefore, I satisfy that, there is no proper communication between petitioner and her counsel, who is supposed to inform to the petitioner about the proceedings.

In this regard, the P.C. in the delay condonation petition referred to Hon’ble Supreme Court citations.

- 1) AIR 1996 SC 2173 in the case of State of U.P. Vs. Harish Chandra.
- 2) 1998 (6) SC 242 in the case of N. Balakrishnan Vs. M. Krishna Murthy

In the light of the above, I feel that, there is sufficient cause to consider the case of the petitioner, as the explanation of the petitioner is acceptable basing on the circumstances prevailed in the case.

Therefore, the petition is hereby allowed and delay of 253 days is condoned in the result, the set-a-side petition also allowed and the exparte decree dated 17.4.2013 is set aside and the counter filed by the petitioner/respondent in the O.P. is taken on file and O.P. posted for conciliation.

.....”

When the aforesaid order was challenged before a learned Single Judge of this Court by the husband of the revision petitioner by

preferring CRP Nos. 3609 and 3763 of 2014, the learned Single Judge, while disposing of them, observed that these applications were not properly dealt by the Court below, though a reference as to the evidence regarding ill-health of the respondent (revision petitioner herein) was filed, the same was not shown in the appendix of evidence. The learned Single Judge also felt that it is necessary to go into the question of the alleged ill-health in detail. Upon making such observations the learned Single Judge had set aside the order passed in IA Nos. 248 and 249 of 2014 and remitted the interlocutory applications back to the lower court with a direction to deal with them afresh and pass a reasoned order after providing an opportunity of hearing to both sides. After remittance of the said applications for fresh disposal, the orders impugned in the present revision petitions were passed.

The remittance of IA Nos. 248 and 249 of 2014 was made by the learned Single Judge giving a direction to the limited extent of causing enquiry into the question of the alleged ill-health of the revision petitioner more in detail with reference to the evidence she produced in support of the ill-health she pleaded as one of the causes for non-filing of the application to set aside the exparte decree of divorce dated 17.4.2013 within the period prescribed in law. The trial Judge, who dealt with the applications after their remittance to him for fresh disposal, had ignored to take the medical record/certificates she produced in proof of the ill-health she pleaded as one of causes for

non-filing of the application to set aside the *ex parte* decree of divorce within the time prescribed only because of the bald assertion made by the respondent in his counter that the medical record and the certificates she produced were forged and fabricated and that copies of the medical certificates produced by her were not furnished to him, though the learned trial Judge had the occasion to give a direction to the revision petitioner to furnish copies of the said documents to him.

It appears from the order impugned in the present revision petitions that the learned trial Judge went to the extent of deciding the legality of the remarriage of the respondent with a tribal woman. Relying on the assertion of the respondent that he married a tribal woman after passing of the *ex parte* decree of divorce without even examining whether or not any evidence was produced by him in respect of his remarriage, the right of the revision petitioner to have the remedies available under law will not be affected due to remarriage of the respondent. The law on this aspect is made clear by the Madras High Court in *Vathsala v. Manoharan*¹ where it is held that,

“where the application to set aside *ex parte* decree filed, any contact of second marriage by the opposite party before setting aside the *ex parte* decree, will not render the pending proceedings infructuous and to say otherwise would mean by the act of a party he or she can successfully defeat the lawful remedy given to the aggrieved party. It is to mean despite re-marriage by the act of a party who obtained decree of divorce or annulment of marriage, the other party's right and remedy to seek for setting aside the *ex parte* decree or to file

¹ AIR 1969 MADRAS 405

appeal against the decree as per the statutory provisions no way be taken away.”

Similar view to some extent was taken by the Kerala High Court in *Susheeladevi v. Padmanabhaiah*² and Punjab and Haryana High Court in *Ujwal Sahari v. Ravi Sahari*³ and it was as under,

“where ex parte decree of divorce against wife obtained by husband on 08.03.1984 and later husband married even after waiting more than one year on 20.12.1985 and blessed with a child in the second wedlock on 15.11.1984, when the first wife preferred appeal on 26.05.1986 even two years after the decree of divorce with application to condone the delay and the delay condonation application for entertaining the appeal filed will not become infructuous for the reason of husband's re-marriage before, as once delay has been condoned it must be held that the period for filing the appeal is not expired. Section 15 of the Hindu Marriage Act, thus does not override Section 28 of the Act which provides the right of appeal....”

It is manifestly clear from the material placed on record that the revision petitioner, while explaining the delay that occurred in filing of the application for setting aside the exparte decree of divorce passed against her, had produced the medical record. Despite the observation made by the learned Single Judge that the evidence produced by the respondent (revision petitioner herein) was not showed in the appendix of the impugned order, though it was necessary to go into the question of the alleged ill-health she pleaded as one of the causes for non-filing of the application to set aside the exparte order in detail and the same was not dealt properly as directed

² HLR 521 KERALA

³ 1995 (2) HLR 633 (PH)

by the learned Single Judge and the medical certificates produced by her simply ignored considering the bald plea of the respondent that those certificates were forged and fabricated.

It is apparent from the material on record that an *exparte* decree of dissolution of marriage was passed against the revision petitioner without even stating the case of the respondent and what were the grounds he urged to seek for divorce and whether any *prima facie* evidence was there in the record to believe such grounds etc. The Sub-Divisional Magistrate-cum-Special Assistant Agent to the Government who passed a decree of divorce had not recorded evidence of the respondent before passing of the *exparte* decree of divorce in his favour. No reason whatsoever was assigned in his order except holding that the respondent (revision petitioner herein) remained *exparte*. The docket order dated 17.4.2013 through which the marriage of the revision petitioner with the respondent was annulled was a cryptic order where it was only recorded that *the revision petitioner called absent, she did not choose to file counter in spite of giving ample opportunity and the petition is allowed as prayed for.*

Passing of such a cryptic order of annulment of marriage itself would show the hasty way in which the case of the revision petitioner was dealt by the court below.

Though it is incumbent on the part of the lower court to mention the facts of the case and whether any *prima facie* evidence is

there in the record to believe the grounds urged by the husband to seek dissolution of his marriage, it has not even verified the pleadings except stating that the petition is allowed as prayed for. No reason is set out in the *ex parte* order dated 17.4.2013 to grant the decree of divorce. In this contest we feel it appropriate to mention the views expressed by the Apex Court in *Balraj Taneja and others vs. Sunil Madan and others*⁴ where it is laid down,

“a judgment should be a self contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. Whether, it is a case which is contested by the defendants by filing a written statement, or a case which proceeds *ex parte* and is ultimately decided as an *ex parte* case, or is a case in which the written statement is not filed and the case is decided under Or. VIII R. 10 CPC. The Court has to write a judgement which must be in conformity with the provisions of the Code or at least set out reasoning by which the controversy is resolved. Even if the definition was not contained in Sec. 2(9) CPC, of the contents thereof were not indicated in Or. XX R. 1 CPC, the Judgement would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. The whole process of reasoning has to be set out for deciding the case one way or the other. A Judge can not merely say Suit decreed or dismissed. In Judicial proceedings there cannot be any arbitrary orders.”

⁴ AIR 1999 SC 3381

We also feel it appropriate to mention the views expressed by the Full Bench of this Court in *Aziz Ahmed v. I.A. Patel*⁵ wherein it is held,

“referring to Or. XX, R. 4(2) & Or. IX, R. 6 CPC- on the ex parte proceedings also that-While pronouncing judgment, Court should apply its mind to the facts of the case and the point at issue and give a reasoned judgment after duly evaluating the evidence adduced. Judgment without reasons and not in conformity with Or. XX, R. 4 & 5 is not a binding Judgment.”

The condonation of delay is a matter of discretion of the Court and Section 5 of the Limitation Act does not say such discretion can be exercised only if the delay occurred within a certain period or reasonable period. The main purpose behind the enactment of Section 5 of the Limitation Act is to enable the Court to do substantial justice to the parties. The only requirement to be fulfilled by the party is to state and explain the reasons which have prevented her/him from presenting the petition within the time stipulated.

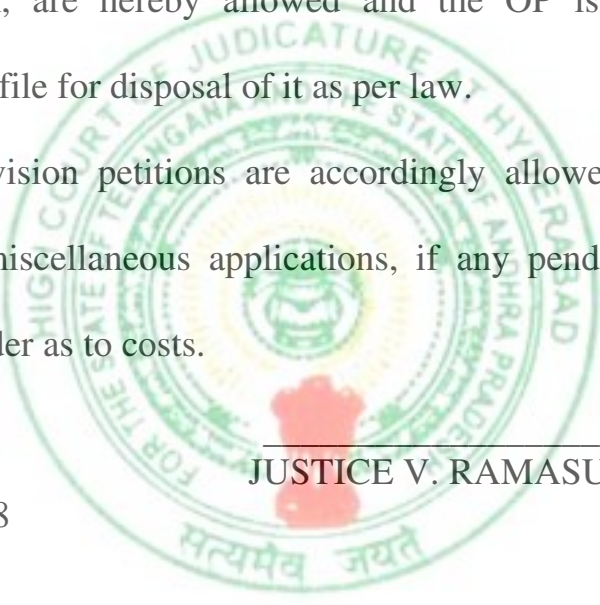
Though we have thought of sending the interlocutory applications to the lower court again for deciding them afresh, having regard to the way in which they are dealt earlier despite the direction given by this Court to examine the question of the alleged ill-health of the petitioner in detail while deciding the application filed under Section 5 of the Limitation Act and the longevity of litigation pending between the parties from 2009 onwards, by exercising our discretion we order for condonation of the delay in filing of the application to set

⁵ AIR 1974 AP 1

aside the exparte decree and also the application filed for setting aside the exparte decree of divorce which has been passed by writing a cryptic order without stating the ground on which material the Court has ordered for annulment of marriage of the respondent with the revision petitioner.

In view of the above, IA No. 248 of 2014 and IA No. 249 of 2014 in HM OP No. 17 of 2009 on the file of the Sub-Divisional Magistrate & Special Assistant Agent to Government, Mobile Court, Bhadrachalam, are hereby allowed and the OP is ordered to be restored to its file for disposal of it as per law.

The revision petitions are accordingly allowed. As a sequel thereto, the miscellaneous applications, if any pending, shall stand closed. No order as to costs.



JUSTICE V. RAMASUBRAMANIAN

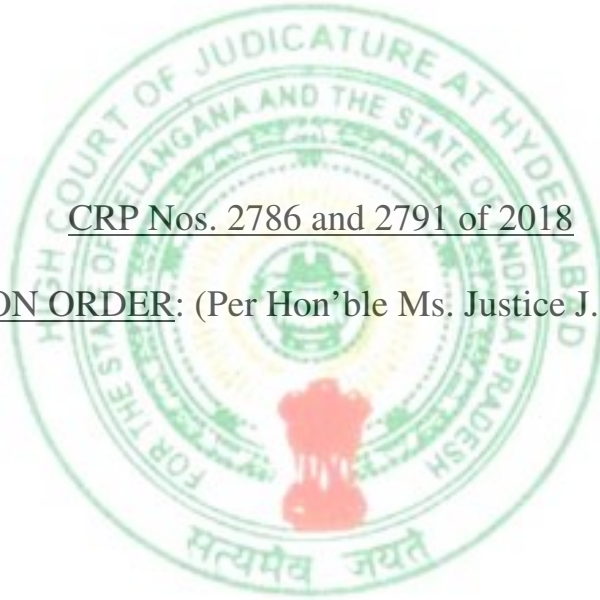
Dt. 20.12.2018
KR

JUSTICE J. UMA DEVI

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CRP Nos. 2786 and 2791 of 2018

COMMON ORDER: (Per Hon'ble Ms. Justice J. Uma Devi)



Dt. .12.2018