

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 442 of 2019
and
C.M.P.s 24414 & 2973 of 2019

J.Nivethitha ... Petitioner

Versus

A.Kumar ... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the fair and final order of learned Family Court Judge, Salem in I.A.No.189 of 2018 in F.C.O.P. No.72 of 2017 dated 02.11.2018.

For Petitioner : Mr.M.R.Kuyilan

For respondent : Mr.C.Prakasam

ORDER

This Civil Revision Petition has been filed challenging the order allowing the application filed by the respondent to restore

F.C.O.P., which was dismissed for default.

2. The respondent/husband filed F.C.O.P.No.72 of 2017 on the file of Family Court, Salem for divorce on the ground of cruelty. The above F.C.O.P. was dismissed for default on 09.03.2018, and to restore the O.P., the respondent has filed the application along with a petition to condone the delay of 44 days in filing the above application. According to the respondent, he was working at Saudi Arabia and his employer did not grant leave, so, he did not able to come to India and appear before the Family Court at Salem, his non-appearance is neither willful nor wanton. However, the petitioner has contested the application on the ground that, the respondent husband has never attended the counselling before the Family Court, and he is not interested in conducting the proceedings. Further, no sufficient cause has been shown for condoning the delay.

3. The Family Court after considering the materials available on record, has allowed the application on payment of cost of Rs.1000/-. The Family Court has held that on the date of first hearing, the respondent was present, and the matter adjourned for counselling. On the first date of counselling the

respondent was present, however, the petitioner did not appear before the Counsellor. The Family Court has further held that, since the respondent is working at abroad, he came to India and filed the application to restore, and there is no malafide on it. Now, challenging the above order, the present Civil Revision Petition has been filed.

4. I have heard and considered the rival submissions made by the learned counsel appearing for petitioner as well as learned counsel appearing for respondent and perused the records carefully.

5. According to the respondent, he was employed at Saudi Arabia, and that fact was not disputed by the petitioner. Now, the Family Court has held that for the first hearing, he was present, and he has also appeared for counselling. But, the petitioner did not appear. Thereafter, according to the respondent, since leave was not granted by his employer, he could not appear for the subsequent hearings before the Family Court. Immediately, after coming to India, he has filed an application to restore the F.C.O.P. along with a petition to condone the delay of 44 days. Considering the above

circumstances, the Family Court allowed the petition with cost, and there is no irregularity or illegality in the order passed by the Family Court, and I find no merit in the Civil Revision Petition. Accordingly, the same is liable to be dismissed.

6. Considering the fact that, F.C.O.P. is pending from the year 2017, the Family Court is directed to dispose the F.C.O.P. within a period of six months from the date of receipt of the copy of this order, and the Family Court is directed to explore the possibility of settlement between the parties.

7. In the result, the Civil Revision Petition stands dismissed with the above direction. No costs. Consequently, the connected Civil Miscellaneous Petition in C.M.P.s 24414 & 2973 of 2019 are closed.

09.12.2019

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

Note : Issue order copy on 20.12.2019

To

Family Court Judge,

4/5

Salem.

V.BHARATHIDASAN,J.

rpp



C.R.P. PD 442 of 2019
and
C.M.P.s 24414 & 2973
of 2019

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