

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD) No.4261 of 2014 &
M.P.No.1 of 2014

S.Suresh

... Petitioner

Vs.

A.Mahalakshmi

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order of the Subordinate Judge's Court at Dharmapuri dated 17.09.2014 in I.A.No.23 of 2009 in HMOP.No.32 of 2005.

For Petitioner

... Mr.P.Valliappan

For Respondent

सत्यमेव जयते
... Mr.V.Elangovan

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ORDER

The instant civil revision petition has been filed challenging the order dated 17.09.2014 passed by the learned Subordinate Judge, Dharmapuri in I.A.N.23 of 2009 in HMOP.No.32 of 2005.

Brief facts leading to the filing of the instant revision under Section 115 of the code of civil procedure:

2. The petitioner filed HMOP.No.32 of 2005 against the respondent seeking for divorce before the Sub Court, Dharmapuri. The respondent remained exparte in HMOP.No.32 of 2005 and an exparte divorce decree dated 22.03.2006 came to be passed in favour of the petitioner. Thereafter, the respondent filed I.A.No.23 of 2009 in HMOP.No.32 of 2005 seeking to condone the delay of 879 days in filing an application to set aside the exparte divorce decree dated 22.03.2006. The reasons given in the affidavit filed in support of I.A.No.23 of 2009 by the respondent is that she was suffering from chikunguniya on the date of hearing of HMOP.No.32 of 2005. i.e., on 22.03.2006.

3. A counter affidavit was also filed by the petitioner in I.A.No.23 of 2009 denying the allegations contained in the affidavit filed in support of I.A.No.23 of 2009. In the counter affidavit, he has specifically stated that subsequent to the passing of the exparte divorce decree dated 22.03.2006, he got re-married on 06.12.2006 and through his re-marriage, he is having two children. In the counter affidavit, he has also stated that the respondent is also aware of the remarriage of the petitioner as evidenced from the criminal proceedings initiated by the respondent against the petitioner in C.C.No.116 of 2005 pending before the learned Judicial Magistrate, Palakode.

4. By order dated 17.09.2014, the learned Sub Judge, Dharmapuri allowed I.A.No.23 of 2009 filed by the respondent in HMOP.No.32 of 2005 seeking to condone the delay of 879 days in filing an application to set aside the exparte divorce decree dated 22.03.2006. Aggrieved by the order of I.A.No.23 of 2009 in HMOP.No.32 of 2005, the instant civil revision petition has been filed under Section 115 of the Code of Civil Procedure.

Submissions:

5. Heard, Mr.P.Valliappan, learned counsel for the petitioner and Mr.V.Elangovan, learned counsel for the respondent.

6. The learned counsel for the petitioner drew the attention of this court to a Single bench judgment of this court in the case of **A.Raja Sundari vs. Suresh Kumar** reported in **2016 (2) MWN (Civil) 286** and submitted that the delay being an inordinate one, the Trial Court ought not to have condoned the said delay, that too, when the petitioner got remarried and is also having two children through the remarriage, subsequent to the passing of the exparte divorce decree as early as on 22.03.2006.

Discussion:

7. This Court has perused the affidavit filed in support of I.A.No.23 of 2009 filed by the respondent. Excepting for stating that on the date of hearing i.e., on 22.03.2006, she was suffering from chikunguniya, no other reason whatsoever has been given in the affidavit

for condoning the inordinate delay of 879 days in filing an application to set aside the exparte divorce decree dated 22.03.2006. Further, no documentary evidence in the form of medical certificate has been produced before the Trial Court to prove the respondent's alleged illness.

8. This Court is also in agreement with the view taken by the learned Single Judge of this Court in the judgment reported in **2016 (2) MWN (Civil) 286** cited by the learned counsel for the petitioner. In the said Judgment, the learned Single Judge of this Court upheld the decision of the family court in dismissing the application to condone the delay of 24 days in filing the application to set aside the exparte divorce decree by holding that the intention of the legislature is that the family court while deciding matrimonial matters has to settle rights of parties after divorce permanently at shortest period of time. In the decision referred to supra, the delay was only 24 days and even then the court had dismissed the condone delay application, whereas in the case on hand, the delay is 879 days and hence, the trial court ought to have dismissed the condone delay application.

9. For the foregoing reasons, this Court is of the considered view that the impugned order passed by the Trial Court is an erroneous one and it has to be set aside.

Conclusion:

10. In the result, the impugned order dated 22.03.2006 passed by the learned Subordinate Judge, Dharmapuri in I.A.N.23 of 2009 in HMOP.No.32 of 2005 is hereby set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

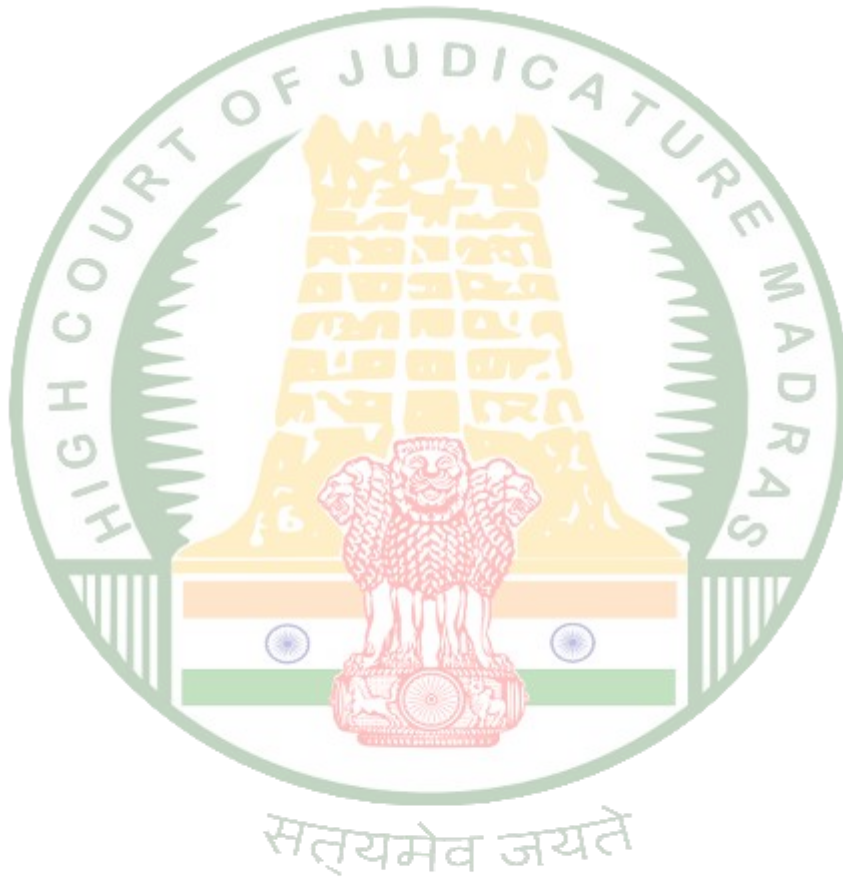
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Speaking/Non-Speaking orders

सत्यमेव जयते
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To

The Subordinate Judge, Dharmapuri



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ABDUL QUDDHOSE. J.,

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