

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.3108 of 2018

&

C.M.P.No.17931 of 2018

V.Mohan

...Petitioner

Vs

S.Priya

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 09.02.2018 in I.A.No.3 of 2017 in H.M.O.P.No.126 of 2015 on the file of the of the Additional Special Judge, Krishnagiri.

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For Petitioner : Mr.Durai Gunasekaran

For Respondent : Mr.C.Prabakaran

ORDER

The above Civil Revision Petition is filed challenging the order passed in I.A.No.3 of 2017 in H.M.O.P.No.126 of 2015, which is the application filed by the wife to condone the delay of 180 days in filing the petition to set aside the ex parte order of divorce granted. The brief facts which are necessary to dispose of the above Civil Revision Petition are as follows:

2.The revision petitioner had filed H.M.O.P.No.7 of 2015 on the file of the Principal Subordinate Judge, Krishnagiri, for divorce on the ground of cruelty and desertion. In the said application, he had alleged that the respondent was in the habit of picking up a quarrel with him and also his family members and that she was friendly with his partner one Madesh. However, the petition was not filed on the ground of adultery.

3.The respondent had filed a detailed counter refuting the allegations and contended that she had no intimacy with the said Madesh and further the revision petitioner was in the habit of consuming liquor and was also prone to having a lot of female friends. He would also not supply food and other materials required for the respondent and their children and was also in the habit of physically abusing her.

4.It appears that, when the matter was posted for the cross examination of the respondent/wife, she did not appear before the Court and consequently, the ex parte decree had been passed. A perusal of the order clearly shows that it is a non-speaking order and various allegations have not been discussed in detail by the Court below.

5.Infact, the petitioner had filed the petition for nullity of marriage. Despite the prayer being one not in consonance with the provisions of Section 13(1)(a) and (1)(b) of the Hindu

Marriage Act, 1955, the learned Judge has proceeded to pass the decree of divorce.

6. Thereafter, on 24.03.2017, the wife had filed an application for setting aside the ex parte order with the petition for condoning the delay of 180 days. In the said petition, she would contend that she was unable to attend the Court on the day, when the same was posted for the evidence namely on 26.08.2016 and thereafter she was unable to file the said petition on account of certain unavoidable situations. Therefore, she sought for condonation of the delay of 180 days in filing the application to set aside the ex parte order.

7. The revision petitioner has resisted the said application on the ground that he had re-married and was living with his present wife. However, he has not mentioned the date on which the marriage took place. He had also made allegations against the respondent that she continued to be in a relationship and is

living with his partner.

8.The Court below has proceeded to allow the said petition by observing that within 180 days the application has been filed and even in the legal notice which the revision petitioner issued to the respondent, he has not made mention about the date of the re-marriage.

9.The said order is the subject matter of challenge here and the only argument that has been put forward is that the revision petitioner has now re-married. It is seen that the application for setting aside the ex parte decree has been filed within a period of seven months from the date of the order. The wife had she known would have stopped the husband from marrying another woman with such speed.

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10.Be that as it may, considering the interest of the minor son and also in the interest of the Justice the delay has been

condoned. I find no infirmity in the order passed by the learned Special Judge, Krishnagiri.

The Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

08.04.2019

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Index : Yes/No
Speaking order/non-speaking order

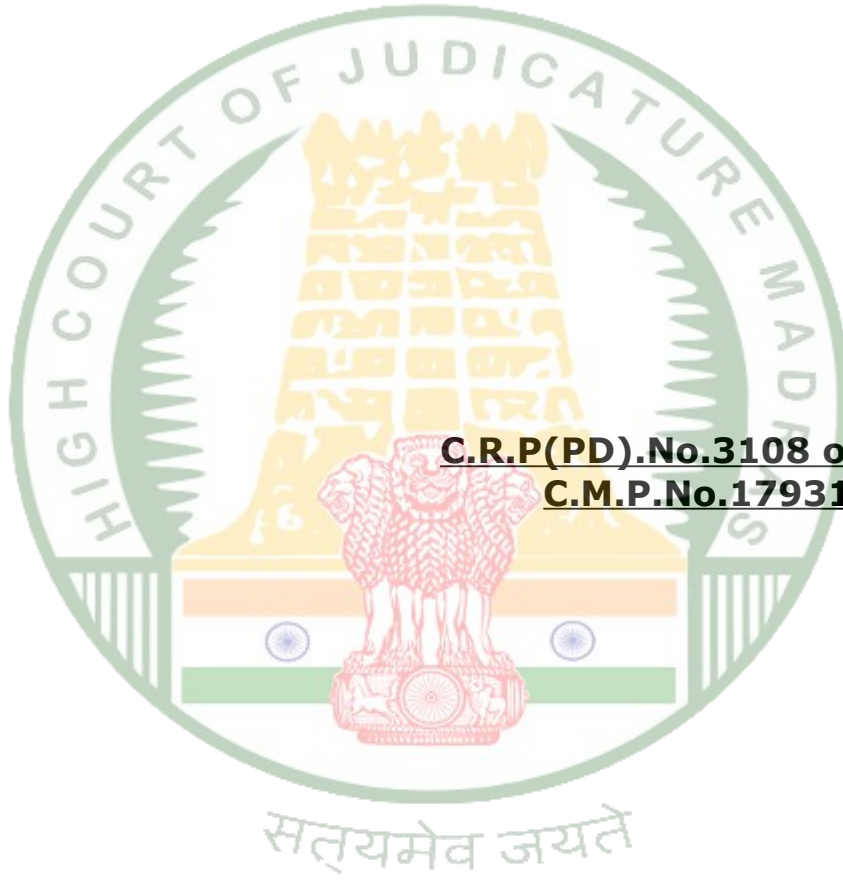
To,
The Additional Special Judge,
Krishnagiri



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P.T.ASHA, J.,

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