



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP(MD) (PD) .No.442 of 2019

S.P.Anbalagan : Petitioner/Respondent/Petitioner

Vs.

Rajeswari :Respondent/Petitioner/Respondent

PRAYER : This Civil Revision Petition has filed under Article 227 of the Constitution of India against the docket order passed in I.A.No.272 of 2018 in H.M.O.P.No.542 of 2011 on the file of the Family Court, Madurai District.

For Petitioner : Mr.V.Prakash
Senior Counsel
For Mr.S.Krishnan

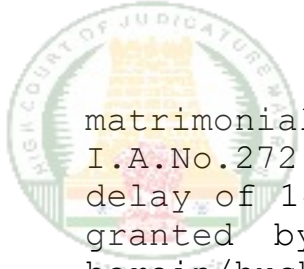
O R D E R

This Civil Revision petition has been preferred against the docket order passed in I.A.No.272 of 2018 in H.M.O.P.No.542 of 2011 on the file of the Family Court, Madurai District.

2.The learned counsel for the petitioner herein/husband would submit that the marriage was solemnized between the petitioner and the respondent on 07.09.2003. Through their wedlock, one male child was born on 07.04.2005. Due to cruelty by the respondent herein/wife, the petitioner herein/husband has preferred H.M.O.P.No.542 of 2011 before the Family Court, Madurai for divorce by dissolving the marriage held on 07.09.2003 between the petitioner and the respondent. For non appearance of the respondent/wife, before the trial Court, exparte order was passed.

3.Thereafter, the respondent herein/wife preferred I.A.No.272 of 2018 to condone the delay of 1433 days in filing the application to set aside the exparte decree passed on 20.08.2014.

4.In the said I.A., the learned counsel for the petitioner herein/husband contended that after the divorce decree obtained by the petitioner/husband, he is not in position to continue the



matrimonial life and at this juncture, the respondent/wife filed I.A.No.272 of 2018 in H.M.O.P.No. 542 of 2011 for condoning the delay of 1433 days for setting aside the exparte decree of divorce granted by the trial Court. The grievance of the petitioner herein/husband is that the trial Court without hearing the petition for condoning the delay, has referred the matter for counselling of both parties and ignored the huge pendency that is caused by the respondent herein/wife in setting the exparte decree. Whereas the mind of the petitioner herein/husband is that he has restricted himself to continue the matrimonial life because of the decree that was passed in the year 2014. The learned counsel further contended that the trial court has the duty to decide I.A.No.272 of 2018 in H.M.O.P.No.542 of 2011, which is whether the delay of 1433 days in filing the application for setting aside the exparte decree should be condoned or not and after the marriage is dissolved by a valid decree or divorce, the trial Court cannot refer the parties for counselling is bad in law.

5.The learned counsel for the petitioner herein/husband has brought to the notice of this Court that this Civil Revision Petition has been preferred against the note order. The note order has to be perused. It is observed that the I.A.No.272 of 2018 preferred by the respondent/wife, a notice was ordered to this petitioner/husband and the same was also served on him and the trial Court has sent the parties for counselling. The grievance of the petitioner/husband is that he has restricted himself to continue the matrimonial life because of the decree passed by the trial Court and there is an abnormal delay by setting aside the order. The trial without deciding the issues in the said I.A., referred the matter for counselling of both parties for reunion is not accepted by the petitioner/husband herein.

6.I have heard the learned counsel appearing for the petitioner.

7.On hearing the petitioner's grievance and on perusal of records, it is observed that the trial Court after considering the date of marriage and the future welfare of the child, referred the matter for counselling. It is also observed that they are living together for long time and it is only an ex-parte order and the said decree cannot disturb the mind of the petitioner to make platform for his future life and in no way the pendency of the said interlocutory application is caused injustice or prejudice to the petitioner/husband. The effort taken by the trial Court is for the welfare of both the parties as well as their child. Hence, this Court does not find any valid reason to interfere with the order passed by the trial Court and there is no merit in this



8. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar (CS)

To

The Family Court Judge
Familar Court Court,
Madurai District.

msa

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