

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 02.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.R.P (MD) .No.810 of 2019**

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Anto Prabhu

... Petitioner/Petitioner / Petitioner

Vs.

Shylaja

... Respondent/Respondent / Respondent

PRAYER:- Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 16.08.2018 passed in I.A.No.353 of 2017 in I.D.O.P.No.110 of 2013 by the Additional District and Sessions cum Fast Track Court, Kanniyakumari District at Nagercoil.

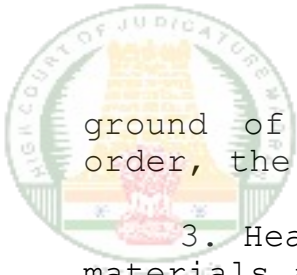
For petitioner : Mr.K.P.Narayanakumar

For respondent : No appearance

ORDER

This civil revision petition has been filed by the petitioner challenging the order dated 16.08.2018 passed in I.A.No.353 of 2017 in I.D.O.P.No.110 of 2013, whereby and whereunder the Court below dismissed the petition filed by the petitioner for condonation of delay of 293 days in filing a petition to restore I.D.O.P., which was dismissed for default, mainly on the ground that the maintenance amount has not been paid by the petitioner.

2. It is seen that the marriage between the petitioner and the respondent was solemnized on 19.05.2003 as per Christian rites and custom. After marriage, they are blessed with two female children. Due to love lost between them, the petitioner filed I.D.O.P.No.110 of 2013 for divorce on the ground of cruelty, desertion and adultery. According to the petitioner, he has been taking care of the elder child. During the pendency of I.D.O.P. the respondent/wife filed I.A.No.297 of 2013 for interim maintenance. According to the petitioner, the respondent has illegal relationship with one Nishanth and she eloped with him and deserted the petitioner and therefore, he is not liable to pay maintenance. By order dated 23.06.2016, the Court below has allowed the petition for interim maintenance holding that the claim of adultery cannot be considered at this stage and directed to pay Rs.8,000/- as monthly maintenance to the respondent. Subsequently, in view of non appearance of the parties and non payment of interim alimony, the Court below has dismissed the IDOP itself for non-prosecution on 26.07.2016. For filing a petition to restore, there occurred a delay of 293 days. For condoning the said delay, the petitioner filed I.A.No.353 of 2017. By order dated 16.08.2018, the Court below has dismissed the petition for condonation of delay on the



ground of non payment of interim alimony. Challenging the said order, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice served, the respondent did not appear either in person or through any counsel.

4. When the matter is taken up for hearing today, the learned counsel for the petitioner submitted that the respondent remarried his paramour by name Nishanth as early as on 11.08.2013 itself, for which he produced a certificate of marriage issued by "Gethsemane Evangelical Church of India" situated at Moosari Junction, Karungal, Kanyakumari District. Therefore, the petitioner is not liable to pay maintenance to the respondent. He would further submit that the Court below has dismissed the petition for condonation of delay only on the ground of non payment of maintenance amount and not on merits, and therefore, this Court may set aside the order passed by the Court below and provide an opportunity to the petitioner to prove his case. Thus, he prayed to allow this revision petition.

5. As rightly stated by the learned counsel for the petitioner, the Court below has dismissed the petition for condonation of delay only on the ground of non payment of maintenance amount and not on merits. Whether the respondent already remarried or not? is a matter for trial. As such, it is for the petitioner to prove that the marriage certificate issued by "Gethsemane Evangelical Church of India" is the real marriage certificate of the respondent herein before the Court below. A copy of the said marriage certificate is enclosed in this order.

6. The reason stated by the petitioner for condoning the delay of 293 days is that his left side body was paralysed on 20.07.2016 and he took treatment as inpatient at Jesus Sidha Varma Vaidyasala, Nithiravilai, Kanyakumari District, for three months and therefore, the delay had occurred. This Court is of the view that the reason stated by the petitioner can be accepted and in the interest of justice, he can be provided one more opportunity to prosecute his case subject to certain conditions.

7. In view of the above and in the interest of justice, the order passed by the Court below is set aside and the delay of 293 days is condoned subject to the deposit of 50% of the entire arrears amount before the Court below within a period of four weeks from the date of receipt of a copy of this order and the petitioner shall continue to deposit the maintenance amount of Rs.8,000/- from this month ie., from August, 2019 without any default before the Court below. If the petitioner failed to comply with the above direction, this order shall stand vacated and the order passed by the Court below shall stand restored. Considering the year of the IDOP, the Court below is directed to dispose of I.D.O.P.No.110 of 2013 on merits and in accordance with law, within a period of four months from the date of deposit as directed above.



8. This Civil Revision Petition shall stand disposed of accordingly. No costs.

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// True Copy //

Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar (CS)

To

1.The Additional District and Sessions
cum Fast Track Court,
Kanniyakumari at Nagercoil.
(with copy of Marriage Certificate)

**+1 CC to Mr.K.P.NARAYANA KUMAR, Advocate (SR-79865[F] dated
06/08/2019)**

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GCG

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