



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 04.09.2019

Orders Pronounced on : 12.09.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P (MD)No.945 of 2019
and
C.M.P. (MD)No.5397 of 2019

Srirangam ...Petitioner/Petitioner/Respondent
Vs.

Mohanakannan ... Respondent/Respondent/Petitioner

PRAYER: Civil Revision Petition is filed, under Under Article 115 of Civil Procedure Code, against the fair and decretal order dated 11.02.2019 passed in I.A.No.131 of 2018 in unregistered HM(CMA) Nil / 2017 on the file of the learned Principal District Judge, Tuticorin.

For Petitioner : Mr.C.Vetrian

For Respondent : Mr.S.Siva Ilayaraja

ORDER

The present Civil Revision Petition has been filed against the fair and decretal order, dated 11.02.2019, passed in I.A.No.131 of 2018 in unregistered HM(CMA) Nil / 2017 on the file of the learned Principal District Judge, Tuticorin. The said application was filed to condone the delay of 188 days in filing the application to set aside the exparte decree passed by the Sub-Judge, Kovilpatti in H.M.O.P.No.65 of 2010, dated 12.09.2016.

2.The learned counsel for the revision petitioner submitted that the delay is only 188 days in filing HM(CMA). Nil / 2017 against the Judgment and decree passed in H.M.O.P.No.65 of 2010, due to the reason that the revision petitioner was suffered by Jaundice in the month of December, 2016, and thereafter, continuously taking treatment for four months. Therefore, the revision petitioner was not able to contact his counsel to file an appeal before the Principal Judge, Tuticorin, in time. Hence, there was a delay of 188 days in preferring the appeal. The learned counsel for the revision

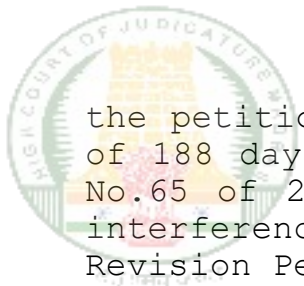


petitioner submitted that without appreciating these facts, the learned Principal District judge, Tuticorin, has dismissed the condone delay application. Hence, he preferred the present revision petition.

3. On the other hand, the learned counsel for the respondent would contend that the Judgment and decree in H.M.O.P.No.65 of 2010 was passed on 12.09.2016 and the copy of the same was made ready on 01.12.2016 and the same was received on the same day by the revision petitioner. He would further contend that in fact, the revision petitioner has received the said Judgment decree well in advance and that now, she concocted a story that she was affected by jaundice for four months from December, 2016. The learned counsel would also submit that in M.C.No.38 of 2016 pending before the learned Judge, Family Court, Tirunelveli, the revision petitioner was present for all the hearings, even when the M.C. Petition was allowed on 07.11.2016. Thereafter, the revision petitioner filed Execution Petition before the Family Court in Cr.M.P.No.7 of 2017 in M.C.No.38 of 2016, on 05.01.2017. In fact, the revision petitioner appeared before the Family Court on 06.02.2017. On the said date, the respondent also appeared and paid part of the maintenance amount and thereafter the matter was posted on 06.03.2017, 07.04.2017, 13.04.2017, 05.05.2017 and 08.05.2017. In all these hearings, the revision petitioner was present before the Family Court, but all these days, she never taken any steps to prefer any appeal. But now she came up with false and concocted version only for the sake of getting the delay condoned. Further, the learned counsel submitted that after the Judgment and decree passed by the Family Court in H.M.O.P.No.65 of 2010, the respondent also got married with another girl, who is also a widow. In these circumstances, the intention of the revision petitioner is only to disturb the second marriage of the respondent and to drag on the proceedings. Hence, there is no need to interfere with the impugned order passed by the court below and prayed for the dismissal of the civil revision.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on record.

5. The reasons stated by the revision petitioner in not filing the appeal in time is that she was affected by Jaundice for a period of four months starting from December, 2016. But the fact remains that she was so active and she has also appeared before the Court below for hearing on 06.02.2017 in Cr.M.P.No.7 of 2017 in M.C.No.38 of 2016 and even she appeared on 06.02.2017; 06.03.2017 and 07.04.2017 before the Family Court. Therefore, the reason that she was suffering from Jaundice and she was not in a position to file the appeal in time is totally false statement made before this Court. Except the said reason, the petitioner has not stated any valid reason in the affidavit. When a person coming before this Court with a false statement, certainly such person is not entitled to be granted relief. Hence, this court is of the considered view that



the petitioner has not stated any valid reason to condone the delay of 188 days to set aside the exparte decree passed in H.M.O.P.(MD) No.65 of 2010. Therefore, the impugned order does not warrant any interference at the hands of this Court. Hence, the present Civil Revision Petition is liable to be dismissed.

6.In result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal District Judge, Tuticorin.

+1 CC to M/s.C.VETRIAN, Advocate (SR-86271[F] dated 12/09/2019)

+1 CC to M/s.S.SIVA ILAYARAJA, Advocate (SR-86304[F] dated 12/09/2019)

Order made in
C.R.P(MD)No.945 of 2019
12.09.2019

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JMN(20.09.2019) 3P : 4C