



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Thirtieth day of July Two Thousand Nineteen

WEB COPY

PRESENT

The Hon'ble Mrs.Justice J.NISHA BANU

CMP(MD) No.10758 of 2018

IN

CMSA(MD) No.22 of 2010

K.SIVASUBRAMANI

... PETITIONER / PETITIONER

Vs

1 CHELLAPONNU

2 VELMURUGAN

... RESPONDENT /RESPONDENT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone 1996 days delay to file restore petition in CMSA No.22 of 2010 and thus render justice.

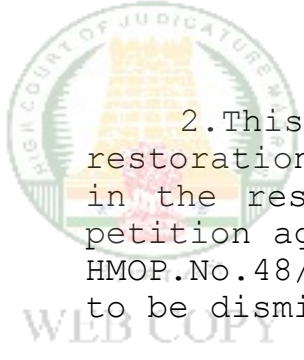
Prayer in CMSA(MD)No. 22/ 2010 :

To call for the records heard the both sides and set aside the dismissal order in C.M.A.10/07, dated 12.03.2010, on the file of Principal District Judge, Dindigul, which it was confirmed in H.M.O.P.No.48/95, dated 12.08.2005, on the file of Principal Sub Judge, Dindigul and thus render Justice.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.J.GUNASEELANMUTHAIAH, Advocate for the petitioner, the court made the following order:-

Right to speedy trial - though not a fundamental right expressly enshrined in the Constitution, the Hon'ble Supreme Court while interpreting Article 21 of the Constitution of India has declared that speedy trial is a fundamental right.

1.1.The litigants expect speedy trial, but the litigants forget that there is responsibility on the part of the litigants also to extend their co-operation to the Court to ensure speedy trial. This litigant has also forgotten the duty.



2.This is an application filed on 26.10.2018, seeking restoration of CMSA(MD)No.22 of 2010. As per the details submitted in the restoration application, the husband has filed the divorce petition against his wife as (R1) and the so-called adulteror(R2) in HMOP.No.48/1995 before the Principal Sub Court, Dindigul, which came to be dismissed on 12.08.2005.

3.The husband filed appeal before the Dindigul Principal District Judge, in HM.CMA.No.10/2007 and that was also dismissed on 12.03.2010.

4.As against the dismissal order, CMSA.No.22/2010 has been filed before this Court. During the pendency of the appeal, notice was ordered to be issued to the respondents. Notice was served on the 1st respondent and not on the 2nd respondent. This Court has ordered substituted service. As steps for substituted service was not taken, the appeal was dismissed as against the 2nd respondent on 09.04.2013.

5.The appeal, which was dismissed as against the 2nd respondent on 09.04.2013 is sought to be restored in the year 2018. What the petitioner/appellant was doing for all these 5 years? Is it negligence? Is it indifference? or Is it a way to hold a knife over the head of his wife thereby threatening her. This application did not even state as to why the petitioner/appellant was not able to take steps for a period of 5 years. The petitioner did not think it proper to allege at least some reasons as to why timely steps were not taken. Just because there is a provision for restoration, it does not mean that restoration application can be filed according to the whims and fancies of the concerned party.

6.This Court took up the pain of finding out the merits also, though the petitioner has exhibited recalcitrant attitude in processing his appeal. The allegation against the 2nd respondent is that he was maintaining illegitimate relationship with the 1st respondent/wife of the petitioner/appellant.

7.The delay in filing the restoration application is in four digit namely, 1996 days. The Courts below concurrently held that the petitioner/appellant is not entitled to the decree of divorce on the ground that the petitioner/appellant did not prove the illegitimate relationship between his wife and the 2nd respondent herein. The husband has taken a plea that the child born to his wife is not born to him, but no scientific proof has been adduced to prove the same.

8.Yet another finding is that when there had been illegitimate relationship between the wife of the petitioner and the 2nd respondent, when the 1st respondent/wife was pregnant, the father-in-law of the petitioner has discharged the loan obtained by the petitioner and in support of the same, discharged pro-note has been filed. The Court has relied upon the circumstances and other



evidence and has given a finding that the husband has not proved the allegation of illegitimate intimacy and therefore is not entitled to the decree of divorce.

9. Considering the facts and circumstances, this Court is of the clear view that this application filed for restoration after a period of 5 years is clearly an abuse of law and mis-use of the process of this Court and there is no justification for seeking restoration and therefore, the application for restoration is liable to be dismissed.

10. In the result, CMP(MD) No. 10758 of 2018 is dismissed as against R2. The appeal shall be listed for hearing as against R1.

Sd/-
30/07/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE PRINCIPAL DISTRICT JUDGE,
DINDIGUL.
- 2 THE PRINCIPAL SUBORDINATE JUDGE,
DINDIGUL.

ORDER
IN
CMP(MD) No. 10758 of 2018
IN
CMSA(MD) No. 22 of 2010
Date : 30/07/2019

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ES/PN/SAR 4/13.08.2019/3P/3C