

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. No. 3767 of 2018

ORDER:

This Revision is filed assailing the order dt.15.03.2017 in I.A.No.39 of 2017 in O.P.No.583 of 2015 of the Additional Family Court, City Civil Courts, Hyderabad.

2. The respondent filed the above O.P. against the petitioner under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 seeking maintenance at Rs.25,000/- per month to herself and to the children born to the respondent and to the petitioner from May, 2015 onwards.

3. The respondent is none other than the wife of the petitioner and they have two minor children, who were aged 6 and 3 years respectively, at the time when the O.P. was filed in May, 2015.

4. Petitioner was set *ex-parte* in the O.P. and an *ex-parte* decree was passed on 03.11.2016.

5. After 307 days, petitioner filed I.A.No.39 of 2017 under Section 5 of the Limitation Act, 1963 to condone the delay of 307 days in filing the petition under Order IX Rule 13 CPC and also to set aside the *ex-parte* decree.

6. These applications were filed on 09.01.2017. In the affidavit filed in support of these applications, petitioner stated that *ex-parte* decree was passed against him on 07.01.2016 in the OP and the respondent had filed E.P.No.12 of 2016 which is pending. He stated that he did not receive notices in the main O.P. and the respondent managed with the serving authorities and got an *ex-parte* decree.

7. Counter was filed by the respondent opposing this application and stating that though notices were sent to the petitioner in the O.P., he intentionally avoided receiving them and they were returned, and since he did not appear in the Court, he was set *ex-parte* and *ex-parte* decree was passed. She also stated that after decree was passed, it was communicated to the petitioner through letter of the respondent's counsel and then the EP was filed.

8. By order dt.15.03.2017, the Court below dismissed I.A.No.39 of 2017 noting that there was a notice issued to the petitioner in the O.P., but the petitioner refused to receive it and there was an endorsement to that effect of the postal authorities. It stated that said refusal endorsement amounts to deemed service under Section 27 of the General Clauses Act. It held that petitioner had knowledge of the contents of

the notice and he had refused to receive the same and therefore he cannot be granted any indulgence.

9. Assailing the same, this Revision is filed.

10. In this Revision, for the first time, counsel for the petitioner contended that petitioner is an alcoholic and was undergoing treatment in rehabilitation clinic. Certificates dt.19.12.2016 and 28.02.2018 are also filed. But this material had not been filed before the Court below and there is no mention in the affidavit filed in support of I.A.No.39 of 2017 that petitioner is an alcoholic and is undergoing treatment in rehabilitation centers. Therefore, this evidence cannot be looked into in the absence of any pleading in I.A.No.39 of 2017 about the alcoholism of the petitioner.

11. Since the record of the trial Court shows that petitioner refused to receive the notice send by the Court, the Court below did not commit any error of law in treating such refusal as deemed service and in decreeing the O.P. *ex-parte*.

12. Therefore, I am of the opinion that the petitioner did not show sufficient cause for condoning the 307 days delay in filing the petition under Order IX Rule 13 CPC to set aside the *ex-parte* decree dt.03.11.2016 in the above O.P.

13. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

14. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

20th March, 2019.

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