

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4899 of 2013

O R D E R:

1. When the matter was listed on 24.07.2019, counsel for the respondent was absent, and so the matter was listed today in the Motion List for '*ex-parte* hearing'. In spite of the same, counsel for the respondent has not appeared today.

2. Heard the contentions of the counsel for the petitioner, Sri T.Dayanand Rao.

3. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.04.10.2012 in IA.No.287 of 2012 in O.P.No.78 of 2010 of the II Additional Senior Civil Judge at Warangal.

4. The petitioner herein had filed the said O.P. under Section 13 of the Hindu Marriage Act, 1955 for dissolution of the marriage between himself and the respondent.

5. The respondent remained *ex-parte* and an *ex-parte* decree was passed on 11.08.2011.

6. Subsequently, I.A.No.287 of 2012 was filed by the respondent under Section 5 of the Limitation Act, 1963 to condone the delay of 196 days in filing the application under Order IX Rule 13 CPC to set aside the *ex-parte* decree dt.11.08.2011.

7. In the affidavit filed in support of the said application she contended that she did not receive any notice from the Court at any point of time and is not residing in the address mentioned in the petition as on the date of service of notice. She contended that she was unaware about the passing of the *ex-parte* decree and claimed that she came to know about the *ex-parte* decree only after she went to police station to lodge a complaint against the petitioner. She alleged that the petitioner was trying to evade maintenance and also trying to marry another woman by cheating her.

8. When the said application was called on the Bench in the Court below on 04.10.2012, counsel for the petitioner reported no objection for condonation of delay, and so the said delay was condoned on payment of costs of Rs.300/- and later I.A.No.944 of 2012 filed under Order IX Rule 13 CPC by the respondent was also allowed on 11.06.2013.

9. Challenging the order dt.04.10.2012 in I.A.No.287 of 2012, this Revision is filed.

10. It is the contention of the petitioner that the O.P. was decreed on 11.08.2011, and after waiting for expiry of appeal time, petitioner married one Bhavani on 18.03.2012 in Sri Venkateshwara Swami Devastanam, Sundaragiri and was also blessed with a son on 14.05.2013 through the 2nd wife. He contended that if at this point of time, the delay in filing the

application to set aside and the *ex-parte* decree in the O.P. is set aside, grave prejudice would be caused to him. He further contended that the counsel, who represented him in the O.P. was never instructed to agree for the condonation of delay by him and he could not have agreed for condonation of the delay of 196 days in filing the application to set aside the *ex-parte* decree in the O.P.

11. Counsel for the petitioner also relied on the decision of this Court in ***Government of Andhra Pradesh, rep. by its Principal Secretary, I and CAD Department, Hyderabad and others v. Smt M.Pratimareddy and others***¹.

12. Along with the CRP, petitioner filed not only the copy of Marriage Certificate dt.15.06.2013 issued by Sri Venkateshwara Swamy Devasthanam, Sundaragiri, but also the Birth Certificate of the child born to him and his 2nd wife on 14.05.2013.

13. The Marriage Certificate indicates that the petitioner married one Bhavani on 18.03.2012 in the said Devasthanam and a child was born to the petitioner and said Bhavani on 14.05.2013.

14. As rightly contended by the counsel for petitioner, after the suit was decreed *ex-parte*, counsel who represented the petitioner in the O.P. would not have any role in the matter and he had no authority to say that he had no objection in condoning the delay of 196 days in filing the application to set aside the *ex-parte*

¹ 2010(1) ALT 256 (D.B.)

decree. Since the delay was condoned on Advocate's representation and since he had remarried in the meantime, grave prejudice was caused to him by condonation of delay and setting aside of the exparte decree.

15. In this view of the matter, this Civil Revision Petition is allowed; the order dt.04.10.2012 in I.A.No.287 of 2012 in O.P.No.78 of 2010 of the II Additional Senior Civil Judge, Warangal is set aside; and the said I.A. is dismissed. Consequently, I.A.No.944 of 2012 is also dismissed.

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

25th July, 2019.
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M.S. RAMACHANDRA RAO, J

