



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CRL.R.C.NO.114 OF 2018

AND

CRL.MP.NO.826 OF 2018

D.Joshua Daniel .. Petitioner

Vs

1. Mahalakshmi @ Kezia
2. Jacinth Keony
3. Jotham Kevin .. Respondents

Prayer:

Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the order passed by the learned V Additional Family Court at Chennai in M.P.No.691 of 2014 in M.C.No.116 of 2012 dated 23.10.2017.

For Petitioner : No appearance

ORDER

This revision petition is directed against the order dated 23.10.2017 passed by the learned V Additional Family Court, Chennai, in M.P.No.691 of 2014 in M.C.No.116 of 2012 rejecting the relief sought by the petitioner to condone the delay of 656 days in filing the petition to set aside the exparte decree dated 08.11.2012 passed in M.C.No.116 of 2012.

2. The case of the petitioner is that the first respondent filed a maintenance case in M.C.No.116 of 2012, in which, he could not appear before the Court below, since he met with an accident, leading to the passing of an exparte order on 08.11.2012. Thus, he filed M.P.No.691 of 2014 seeking to condone the delay in filing the petition to set aside the said exparte order, which was rejected by the Court below without appreciating the materials placed before it. Hence, this Criminal Revision.

3. On 29.01.2018, this Court, while admitting this criminal revision case, has granted an order of interim stay on condition



that the petitioner shall deposit 50% of the arrears of interim maintenance as ordered by the Court below. There is no report as regards the compliance of the said order by the petitioner.

4. There is no representation for the petitioner either in person or through his learned counsel. Though notice was ordered on 29.01.2018, no steps have been taken by the petitioner to serve papers on the other side, even at this length of time. However, considering the nature of the issue involved herein, this Court is inclined to proceed with the matter on merits.

5. A perusal of the order impugned herein would reveal that the petitioner sought to condone the delay on the ground that he met with an accident, due to which, he could not appear before the Court below leading to the passing of the exparte order. However, he did not adduce any evidence either oral or documentary to substantiate the same and he not even mentioned the date of accident in the condonation of delay petition. Further, the first respondent stated before the Court below that the petitioner appeared before the Mahila Court on 05.11.2012 and 19.11.2012, but deliberately failed to appear before the Court below on 08.11.2012. Since there being any sufficient cause shown by the petitioner, the Court below has rightly dismissed the condone delay petition, which this Court is not inclined to interfere.

6. Accordingly, this revision is dismissed being devoid of merits. It is open to the respondents to proceed against the petitioner for recovery of monthly maintenance amount including arrears, in the manner known to law. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(Writ)

//True Copy//

Sub Assistant Registrar

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To

The V Additional Family Court,
Chennai.

Cr1.R.C.No.114 of 2018

KS (CO)
CS/08/07/2020