

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.02.2020

Judgment Pronounced on : 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P(NPD).No.4744 of 2012

and

M.P.No.1 of 2012

M.G.M.Anand

.. Petitioner/Respondent/
Petitioner

Vs.

Suvitha Suganthi

.. Respondent/Petitioner/
Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1906, against the fair order and decretal order dated 02.11.2012 in I.A.No.493 of 2006 in I.D.O.P.No.55 of 2004 on the file of the Principal District Judge, Chengalpat.

For Petitioner : Mrs.Hema Sampath
Senior Counsel
for Mr.M.V.Balakrishnan

For Respondents : Mr.M.Ajmal Khan

Senior Counsel
for Mr.J.Antony Jesus

ORDER

For the sake of convenience, the parties are referred to as petitioner/husband and respondent/wife.

2(a). The revision petitioner herein is the husband and the respondent is the wife. The marriage between the petitioner and the respondent was solemnized on 09.09.1992 at “Our Lady of Snows Church”, Tuticorin.

2(b). The petitioner/husband filed the IDOP.No.55 of 2004 for dissolution of his marriage that took place on 09.09.1992 on the ground of cruelty by giving the petitioner's address at Neelankarai, Chennai-41 and an exparte decree of divorce was granted on 29.04.2004.

2(c). Subsequently, the respondent/wife filed a petition to set aside exparte decree with delay. The petition to condone the delay in

I.A.No.493 of 2006 was filed and the same was allowed exparte and petition to set aside the exparte decree of divorce in I.A.No.29 of 2007 was also allowed. Subsequently, judicial proceedings have been taken and exparte order passed in the above said IAs are set aside and the husband has filed the counter.

2(d). After hearing both sides, I.A.No.493 of 2006 was allowed and the delay of 844 days was condoned. Aggrieved against the said order passed in I.A.No.493 of 2006, order dated 02.11.2012, in condoning the delay of 844 days, the husband has filed the above Civil Revision Petition.

3. Heard Mrs.Hema Sampath, learned Senior Counsel appearing for the petitioner/husband and Mr.M.Ajmal Khan, learned Senior Counsel appearing for the respondent/wife and perused the records.

4. The brief facts leading to filing of the above applications are as under:

4(a). The marriage between the petitioner and the respondent was solemnized on 09.09.1992 as per Christian rites. The parties resided in a

joint family in Santhome with the petitioner's/husband's family members. Out of the wedlock, first son Showyn was born on 18.04.1997 and he is autistic. Thereafter, on 21.12 2000, their second son Iwyn was born.

4(b). At the insistence of the respondent/wife to set up a separate home, the petitioner shifted his family to Neelankarai. Thereafter, in the month of September, 2003, the petitioner/husband had to shift to Besant Nagar unable to stand the cruelty of the respondent/wife.

4(c). On 16.03.2004, the petitioner/husband filed I.D.O.P.No.55 of 2004 against the respondent/wife before the Principal District Court, Chengalpet for divorce under Section 10(1)(x) of the Divorce Act. On 28.03.2004, the respondent/wife was admitted in hospital and on 05.04.2004, the respondent was discharged from the hospital and she returned to her house on the same day.

4(d). According to the petitioner/husband, on 06.04.2004, when the process server attempted to serve summons of the divorce petition on the respondent, after reading the summons, she refused to receive it.

Hence, it was pasted on the door in the presence of two witnesses. Thereafter, on 12.04.2004, the respondent/wife went with her parents to Tuticorin. The IDOP was decreed exparte on 29.04.2004.

4(e). After exchange of legal notices on 26.01.2005, the jewels and other articles belonged to the respondent/wife were returned to her and reply sent through her counsel was marked as Ex.R7 dated 03.01.2006.

4(f). Under Ex.R2-the complaint lodged by the respondent/wife before the learned Judicial Magistrate No.I, Thoothukudi, under Section 156(3) of Cr.P.C., against the petitioner/husband and his family members.

4(g). The respondent/wife filed I.A.No.493/2006 to condone the delay of 844 days and the same was allowed exparte. Subsequently, I.A.No.29/2007 to set aside the exparte decree passed in the main IDOP was posted for counter and I.A.No.376/2007 was filed by the husband to set aside the exparte order condoning the delay passed in I.A.No.493/2006 and subsequently, the petition to condone the delay

of 844 days in filing the application in I.A.No.493/2006 was contested and orders were pronounced on merit. Hence, this Civil Revision Petition.

5. On perusal of the lower Court records, it is seen that the main I.D.O.P.No.55 of 2004 was filed by the petitioner/husband for dissolution of marriage on the ground of cruelty. The same was decreed exparte on 29.04.2004 and the application in I.A.No.493 of 2006 was filed by the respondent/wife before the trial Court to condone the delay of 844 days on the ground that she was not aware of the judicial proceedings and no summons were served in the main IDOP and only through the subsequent legal notice issued by the learned counsel for the petitioner/husband, she came to know about the same and accordingly filed the condone delay application.

6. The learned Senior Counsel Mrs.Hema Sampath would contend that the trial Court has committed a blunder in allowing the condonation petition without seeing the official records placed on record and not

looked into the documents available on Court records.

7. Mr.M.Ajmal Khan, learned Senior Counsel appearing for the respondent/husband made submissions in support of the findings of the trial Court.

8. During the enquiry in the IA, P.W.1 was examined and Ex.P1 to Ex.P3 were marked and Ex.R1 to Ex.R11 were marked during the cross-examination of P.W.1.

9. The core issue that is to be decided in this petition is whether the summon was served to the respondent/wife and whether she had the knowledge of I.D.O.P.No.55 of 2004 or not and whether there is a sufficient cause to condone the delay. The summons in I.D.O.P.No.55 of 2004 sent through the Alandur District Munsif Court Process Server and he has also filed a report along with the statement signed by the witness dated 06.04.2004.

10. This Court has called for the records from the trial Court and

perused the original records. The records of the trial Court categorically disclose the fact that when the bailiff of the trial Court went to the respondent's Neelankarai address for service of notice on 06.04.2004, she was very well available and when the notice was tendered to her, she had gone through the same and thereafter refused to accept the same resulting the bailiff noting down her such refusal and affixing copy of the notice at her premises as attested by witnesses and returned the notice, with endorsements to that effect.

11. The trial Court treating the same as due service and there was valid service of notice in the main IDOP through the Court bailiff on the respondent/herein on 06.04.2004 and further, the records reveals that statement of witnesses has also been recorded by the bailiff. One of the witness to the affixer is Mr.V.A.Rajendran, who is working as Security in the Sun Raise Avenue in the very same area, which is a nearby address. Another person is one Mr.Janakiraman, who is also signed in the document. These two statements assumes significance.

12. While the factual position being so, the learned Senior Counsel

for the respondent/wife would submit that on 06.04.2004, the respondent/wife had discharged from the Ramachandra Medical Care Centre, Porur, Chennai and proceeded to her parent's place at Thoothukudi. To substantiate the same, he draw my attention to Exs.P1 to P4.

13. Per contra, the learned Senior Advocate appearing for the petitioner/husband draw my attention to Exs.R1 to R3 to show that she was discharged on 05.04.2004 itself.

14. On perusal of Exs.P1 to P3 had categorically discloses that the date of discharge is 05.04.2004, not 06.04.2004 as pleaded by the respondent/wife assumes significance. On perusal of Ex.R3, the discharge summary which contain more than six pages and after perusal of the entire documents and originals available in the lower Court records, goes to show that the date of discharge is only on 05.04.2004. It remains to be stated that the date of discharge is different from the date of discharge summary.

15. It appears that the lower Court had misguided itself on this point. Further more, Ex.R1 is the respondent/wife's bank statement and Ex.R2 is the certified copy of the criminal complaint lodged by the respondent/wife and Ex.R3 is the discharge summary of Sri Ramachandra Medical Care Centre, Porur, Chennai and after going through the original records, this Court is of the considered view that the respondent/wife was discharged from Ramachandra Medical Care Centre, Porur, Chennai, on 05.04.2004 and hence contra findings rendered by the trial Court suffers from error apparent on the face of the records. Hence, the said findings given by the trial Court is hereby stands vacated. Further more, on perusal Ex.R2, the respondent also admitted that she was discharged from hospital on 05.04.2004 itself and therefore, the trial Court has misread the Ex.R3 and rendered a finding which is on face of the record erroneous and hence the finding of lower Court suffers from ex-facie error.

16. Yet another point is that after perusal of the suit summons and return reports submitted by the Process Server that he has executed his administrative work in accordance with Order 5 Rule 17 of the Civil

Procedure Code and made suitable endorsement and also obtained the signature of two independent witnesses, who are none other than the Security officers in the neighbourhood bungalow, where the respondent/wife resides. Mere unqualified allegation, as if, no summons was served upon her will not serve any purpose.

17. After going through the Process Servers' report as extracted above, this Court is satisfied with the procedure adopted by the said Process Server in recording the attitude of the respondent/wife in going through the summons and thereafter she had refused to receive the summon and accordingly, the Process Server made the endorsement and affixed notice of hearing in the presence of two witnesses and also taken due endorsement from the said two witnesses as required under the Civil Procedure Code.

18. On perusal of the affidavit filed by the respondent/wife before the trial Court in support of the petition to condone the delay, she has not whispered anything as to when she left Neelankarai address is the crucial

part of material fact.

19. It remains to be stated that after the refusal by respondent/wife, Court notice was served by affixture. Based upon the bailiff's report, the trial court has passed the decree on 29.04.2004 after recording the evidence of the petitioner/husband. It is also seen that subsequently, the respondent/wife sought for income tax and wealth tax returns, for which the husband's counsel sent all such documents as enclosure to his letter dated 09.03.2006 and the same was received and duly acknowledged by her on 13.03.2006. Thus, it is seen that all these proceedings are as a sequel to and consequent upon the exparte decree of divorce passed by the trial Court dated 29.04.2004 holding there was due service of Court notice and unlawful refusal on her part to accept such Court notice. As otherwise, there would have been no occasion for these notices or return of the jewels, articles and documents belonging to her could raise also assume significance. This fact also duly establishes that she was fully aware of the filing of I.D.O.P.No.55 of 2004 for divorce and passing of the decree therein by the trial Court on 29.04.2004.

20. It remains to be stated that in the Ex.R2, petition filed by the respondent/wife under Section 156(3) of Cr.P.C., before the learned Judicial Magistrate No.I, Thoothukudi also goes to show that she had discharged from the hospital on 05.04.2004 and was residing in the address mentioned in the suit summon on 06.04.2004 and thereby the same lend support to the case of the petitioner/husband and also to the report of the Court Process Server.

21. The Court bailiff's report is to the effect that he went to the respondent's address, tendered the court notice with the copy of the petition annexed, the respondent read the notice and the copy of the petition and thereafter refused to receive them and hence, the Court-bailiff affixed the notice at her residence duly attested by two witnesses and returned the notice with such categorical endorsements. Refusal to receive the notice is deemed to be sufficient service. As such there was valid service of notice in the main IDOP through the Court Bailiff on the respondent/wife under Order 5 Rule 17 of the Civil Procedure Code.

22. Section 114(e) of the Indian Evidence Act explains that

Judicial and Official Acts are presumed to be properly performed. The judgment reported in **1991(1) LW 244 to 246 (C.Ramasami vs. Kuruva Boyan and other)** it has been held that in order to reject the official records such as bailiff's endorsements, there must be a definite and specific plea of fraud, and that the presumption under Section 114(e) of the Indian Evidence Act and Official Acts are performed regularly, undoubtedly will apply.

23.The official Acts of the bailiff remains unassailable, there is no reason to disbelieve the bailiff's report, it has not been disputed in the manner known to law that the allegation contra to the bailiff's report is bald, vague and that there is definite and specific contra plea to that effect. The rebuttable presumption under Section 114(e) of the Indian Evidence Act that the respondent not chosen to examine the bailiff and the attesting witnesses to the bailiff's report to prove her contention that the report of the bailiff was wrong or false. The respondent/wife has conveniently omitted to state specifically in her affidavit as to when she left house at Neelankarai also assumes significance.

24. From the discussions in the preceding paragraphs, this Court finds that the respondent/wife knew the date of hearing of the case on 26.04.2004 from Court notice tendered by Court Bailiff and deliberately failed to attend the case on 26.04.2004 and also had the knowledge of the order passed in the IDOP dated 29.04.2004 for dissolution of marriage.

25. At the risk of repetition, however for the sake of clarity that in pursuance of the decree of dissolution of marriage passed on 29.04.2004, the petitioner through advocate caused to issue notice dated 23.01.2005 as she was aware of the fact of divorce, and in consequence of the decree of divorce she was requested to take back all her jewellerys and articles, that she has not collected the same from the petitioner inspite of various requests made by the petitioner as well as his family members to the respondent. The notice sent by the petitioner through counsel's office copy Ex.R4, which was accepted by the respondent by postal acknowledgment-Ex.R5. After the receipt of the notice dated 23.01.2005, Ex.R4, the respondent received her entire jewels, belongings and articles etc., on 26.01.2005, the respondent has accepted and signed for receipt of the same, duly attested by her father and without protesting, thus, this

Court finds that in pursuance of the decree, the respondent obtained all her jewelleries, articles and belongings.

26. In addition to the above, in continuation of the receipt of the jewelleries articles and belongings, on 26.01.2005, the respondent has also received her income tax returns, wealth tax returns, etc., by postal acknowledgement Ex.R6. The respondent made complaint under Ex.R7 that the petitioner misappropriated Rs.6,90,000/- and cheated her and she would take criminal legal action there for against the petitioner.

27. All the proceedings of return of jewels, articles, belongings and return of income tax and wealth tax returns are as sequel to and consequent upon the decree of divorce passed by the court pointing out to the fact that there was due service of Court notice and the respondent is aware of the decree of divorce.

28. Thus, based upon the material fact, as could be seen from records, this Court finds that the summons in the main petition was duly served on 06.04.2004 on the respondent/wife. After going through the summons, she refused to receive the summon in the petition mentioned

address. As seen from the original records, her presence on 06.04.2004 is also proved in all probability and she has been discharged from hospital on 05.04.2004 and not on 06.04.2004 as found by the trial Court. Besides she has not whispered anything as to when she left the Neelankarai address in her affidavit and Exs.R1 and R2 Bank statement also the other connected statements goes to show that it is her matrimonial home, where she was residing and further more Ex.R3 affidavit filed before the learned Judicial Magistrate No.I, Thoothukudi also lend support to the case of the petitioner/husband that she was discharged from Ramachandra Medical Care Centre, Porur, Chennai on 05.04.2004 and she was available in the petition mentioned address on 06.04.2004. When the summons was served upon her after perusing the suit summons, she refused to receive the same resulted in service by affixer and the same has been proved in the manner known to law and the court documents as referred above also raise presumption under Section 114 of the Indian Evidence Act that it was duly served besides duly corroborated by the independent witnesses as stated supra besides her own affidavit filed before the Judicial Magistrate Court, Thoothukudi in

Ex.R3 and hence the plea raised in the affidavit to the petition to condone the delay, are suppression of material facts.

29. The respondent/wife had knowledge of the hearing of the petition but she failed to appear and further more subsequent to the court proceedings, she also accepted the articles and jewels from her husband and further demanded return of the wealth tax returns and income tax returns as discussed supra and further more she also filed a compliant before the Judicial Magistrate Court, Thoothukudi and the affidavit filed by her before the said Magistrate Court runs contrary to the plea taken by her in this petition and there is no iota of bonafideness and this Court finds that the summons in the IDOP was deemed to have been served on the respondent/wife as she refused to receive the same and she had the knowledge of the institution of I.D.O.P.No.55 of 2004 and also the relief granted therefor and as she has not made out any facts sufficient cause to condone the delay of 844 days and the trial Court on erroneous consideration appears to have condoned the delay and hence warranting interference by this Court.

30. In the result, this Civil Revision Petition is allowed. No Costs.

The fair and decreetal order dated 02.11.2012 in I.A.No.493 of 2006 in I.D.O.P.No.55 of 2004 on the file of the Principal District Judge, Chengalpet is hereby set aside. Consequently, the decree of divorce granted for the parties to this lis in I.D.O.P.No.55 of 2004, dated 29.04.2014 is kept intact. Consequently, connected M.P is closed.

31.07.2020

Index : Yes/No
Internet: Yes/No
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To

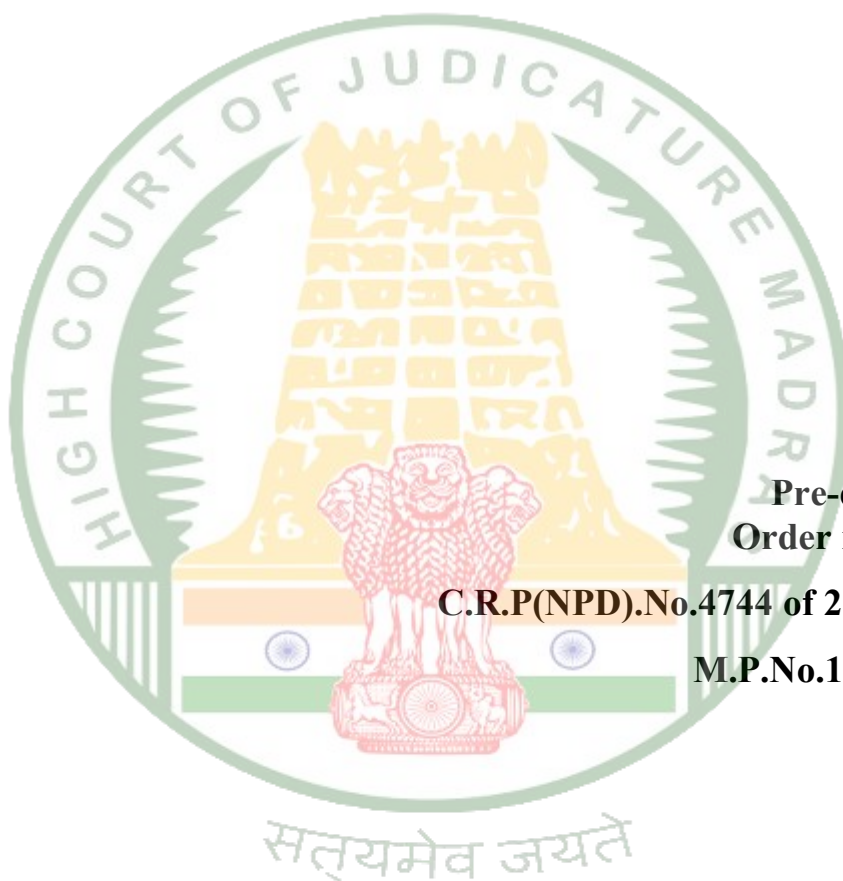
1. The Principal District Judge,
Chengalpet.
2. The Section Officer,
Vernacular Records,
Madras High Court,
Madras.

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RMT.TEEKARAMAN, J.

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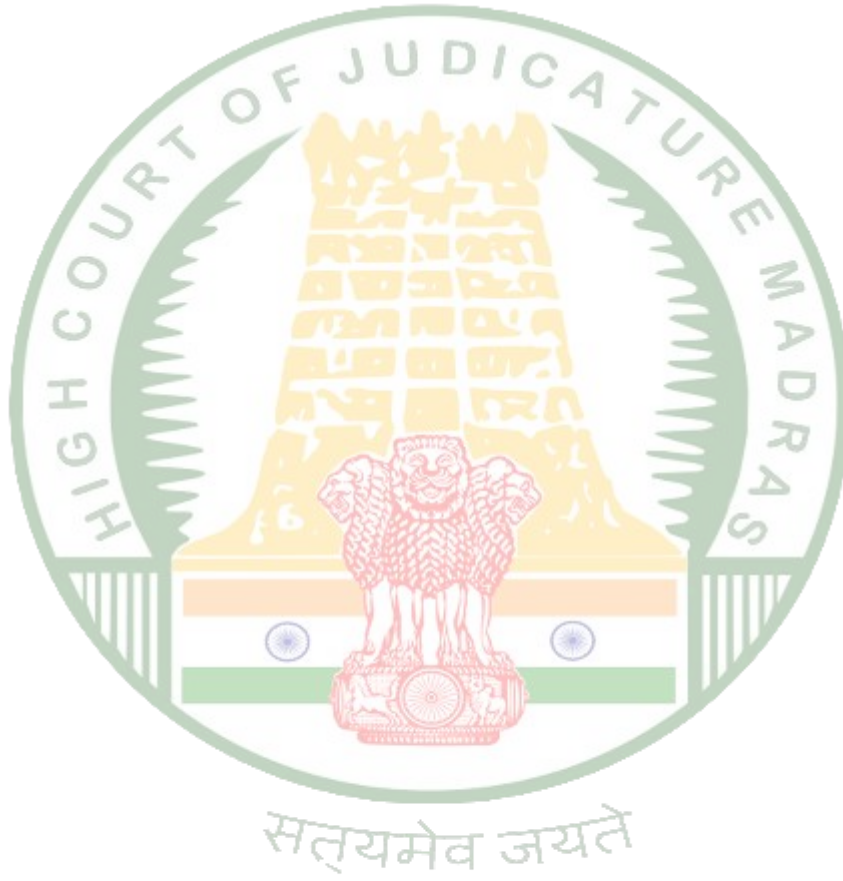
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