

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)NO. 3991 OF 2018

Annadurai

...Petitioner

Vs.

Mohanambal

..Respondent

Prayer: Civil Revision Petitions filed under Section 115 of C.P.C, against the fair and decreetal order dated 06.08.2018 in I.A.No. 137 of 2015 in H.M.O.P.No. 105 of 2001 on the file of the Principal Sub-Ordinate Judge, Vriddachalam, Cuddalore District.

For Petitioner : Mrs.A.L.Ganthimathi

For Respondent : Mr.V.Lakshminarayanan

O R D E R

The petitioner / husband whose petition for divorce was dismissed for non-payment of maintainance on 06.06.2006 sought for restoration of the said petition treating it as a dismissal for default simplicitor and filed an application for condonation of delay of 3310 days in filing the application to restore the H.M.O.P.No. 105 of 2001.

2. The Trial Court dismissed the application for condonation of delay concluding that the delay has not been properly explained. The Trial Court also found that the petitioner / husband has not produced any evidence to show that the maintainance as ordered by the Court has been paid in full. Aggrieved, the petitioner / husband has come up with this revision.

3. Heard Mrs.A.L.Ganthimathi, learned counsel for the petitioner and Mr.V.Lakshminarayanan, learned counsel for the respondent.

4. As rightly pointed out by Mr.V.Lakshminarayanan, the very application for condonation of delay in seeking to restore the main original petition namely, H.M.O.P.No.105 of 2001 is not

maintainable. It was not dismissed for default of the petitioner. It was dismissed for non-payment of the interim maintenance as ordered by the Court. The petitioner should have either filed a revision against the order directing payment of interim maintenance or should have challenged the dismissal of the original petition for non-payment of maintenance.

5. Having not challenged those orders, the petitioner cannot maintain the application for restoration of the HMOP, more so, without paying the maintenance as directed by the Court. I therefore, do not see any error in the order of the Trial Court in refusing to condone the delay in filing an application to restore. In my considered opinion, the very application for restoration is not maintainable and remedy of the petitioner was to have challenged the order dismissing the HMOP for non-payment of maintenance. Hence, this civil revision petition fails and it is accordingly dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

The Principal Sub-Ordinate Judge,
Vriddachalam, Cuddalore District.

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.30469

+lcc to Ms.AL.Ganthimathi, Advocate, S.R.No.30732

सत्यमेव जयते

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PPA(CO)

NRA(14/12/2020)

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