



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P(MD) Nos.2344 and 2345 of 2012
and M.P(MD)Nos.1 and 1 of 2012

In both revisions:

Tamilmaran .. Petitioner/Respondent/Respondent

Vs.

Janet Rosaline Vinnerasi .. Respondent/Petitioner/Petitioner

PRAYER in both revisions: The Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 06.03.2012 passed in I.A.NO.425 of 2009 in H.M.O.P.No.71 of 2005 and I.A.No.130 of 2010 in H.M.O.P.No.259 of 2006 on the file of the Principal Subordinate Judge, Thiruchirappalli.

In both revisions:

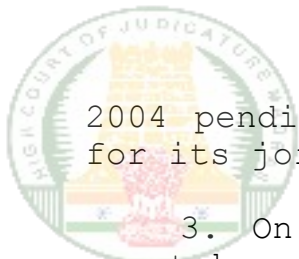
For Petitioner : Mr.M.Saravanan
For Respondent : Mrs.J.Maria Roseline

CO M M O N O R D E R

These revisions are preferred challenging the separate orders condoning the delay for filing a petition for the restoration of H.M.O.P.No.71 of 2005 which the respondent has laid for restitution of conjugal rights and another similar petition for condoning the delay in setting aside an ex-parte order of dissolution of marriage in H.M.O.P.No.259 of 2006.

2.The undisputed facts may be stated briefly:

Some time in 2003, the revision petitioner was married to the respondent. Out of the wedlock, the couple have a son. Soon there arose strong differences between the parties owing to which the parties began to live separately. The revision petitioner/husband of the respondent laid H.M.O.P.No.83 of 2004 for dissolution of marriage before the Sub Court, Mettur. Subsequently, the respondent laid H.M.O.P.No.71 of 2005 for restitution of conjugal rights before the Sub Court, Trichirappalli. It is not very much in dispute that the respondent had moved this Court for transfer of H.M.O.P.No.83 of



2004 pending before Sub Court, Mettur to Sub Court, Trichirappalli for its joint trial, and it was allowed.

3. On transfer, the petition seeking dissolution of marriage was taken on file by the Sub Court, Trichirappalli in H.M.O.P.No.259 of 2006. Joint trial was ordered and evidence was recorded in H.M.O.P.No.259 of 2006. On 26.06.2007, the revision petitioner was examined as P.W.1. Be that as it may, on 31.03.2008, the petition in H.M.O.P.No.259 of 2006 filed for dissolution of marriage was ordered ex-parte and H.M.O.P.No.71 of 2005 filed for restitution of conjugal rights by the respondent herein was dismissed for default. Subsequently, on 02.09.2009, after the delay of 492 days, the respondent had filed I.A.No.130 of 2010 for condoning the delay for filing a petition for setting aside an ex-parte order passed in H.M.O.P.No.259 of 2006 and I.A.No.425 of 2009 for condoning the delay in filing the petition for restoration of H.M.O.P.No.71 of 2005. The revision petitioner contested both these petitions and the trial court found it fit to condone the delay. These orders are now under challenge in these revisions.

4. The learned counsel for the revision petitioner submitted that while a reasonably fair discretion exercised by the court in condoning the delay may not invite interference of this Court either under Section 115 of C.P.C or under Article 227 of Constitution of India, the facts are peculiar and can be related to the conduct of the respondent and requires serious consideration.

4.1 The learned counsel proceed to list certain conduct attributable to the respondent which the court below ought to have reckoned. They are:

- a) P.W.1 was examined on 26.06.2007. Thereafter 11 adjournments were granted to the respondent to cross-examine the petitioner but not on one occasion the respondent chose to turn up. Hence, on 31.03.2008 the trial court, left with little option, passed the orders allowing H.M.O.P.No.259 of 2006 and dismissing H.M.O.P.No. 71 of 2005, for default.
- b) The only reason the respondent has stated in her affidavit for explaining the delay was that, 3 days prior to 31.03.2008, her father had died and hence, she could not organize filing of the petition for setting aside the exparte order passed in H.M.O.P.No.259 of 2006 for restoration of H.M.O.P.No.71 of 2005 as the case may be. However, on 31.04.2009, the respondent had filed M.C.No.5 of 2009 before the Judicial Magistrate Court, Lalgudi, in which the learned Magistrate had awarded maintenance of Rs.5000/- per month only to the son of the respondent, and not to her which would indicate that the respondent can defend herself.

- c) Be that as it may, the respondent again moved this Court in Tr.C.M.P.No.70 of 2010 for transfer of all the cases along with



ground that she had since obtained a job in Chennai. On 12.11.2010, that petition was dismissed by this Court wherein this Court had observed that the respondent is only keen to drag on the matter much to the agony of her husband.

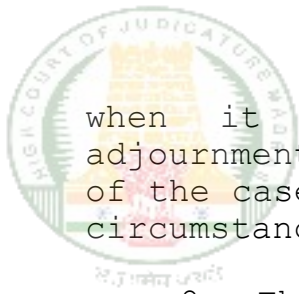
4.2 Continuing his argument further, the learned counsel submitted that in the petition filed for dissolution of marriage in H.M.O.P.No.259 of 2006, the petitioner had alleged the reasons for separation. According to the petitioner, after marriage the respondent had disclosed that she has a masters degree in management, and that she was working in a Hotel in Trichirappalli for three years prior to her marriage, and that she wanted to continue to work after her marriage. It is over this difference the respondent had separated. Now in Tr.C.M.P.No.70 of 2010 she herself had admitted that she was a management graduate, and was working in a private concern in Chennai. This implies that the respondent was adequately educated to know the consequences of what she was doing.

4.3. This apart, argued the counsel, after 11 months since the order of dissolution of marriage was passed, the revision petitioner had again married on 22.02.2009 and that he has two children out of this wedlock, and in her M.C.No.5 of 2009 which he filed on 13.04.2009, she had intimated about contracting a second marriage. The trial court however overlooked the entire conduct of the respondent in proper perspective, and allowed the petition for cause of substantial justice.

5. Per contra, the learned counsel for the respondent highlighted the plight of a woman driving to destination and also do battle alone with the child that is only support as having passed away. She also relied on the following authorities: **State of Bihar and Others Vs. Kameshwar Prasad Singh and another** [JT 2000 (5) SC 389], **N.Balakrishnan Vs.M.Krishnamurthy** [1998 (7) SCC 123] , **Collector, Land Acquisition, Anantnag and another Vs. Mst.Katiji and others** [1987 (2) SCC 107] and **Surya Dev Raj Vs. Ram Chander Raj ad Others** [2003(6) SCC 675].

6. This Court carefully weighed the rival contentions and approached the matter from a plane of plain pragmatism. There are two aspects. First point is adequacy of the cause shown by the respondent for condonation of delay in filing her applications before the trial court, second point is the current status of the revision petitioner. The conduct of the respondent comes far very close scrutiny more in the light of the revision petitioner's changed status.

7. There is no dispute in the fact that before the trial court the respondent did not appear nearly for 11 hearings when the matter was posted for cross-examination of P.W.1, and it appears that the trial court was far too considerate in accommodating the respondent



when it granted those adjournments. When accommodation and adjournments did not advance the objective of concluding the trial of the case, the trial court proceeded to do what it has to do under circumstances.

8. The respondent has filed necessary application with the delay of 519 days. However till the decree for dissolution of marriage was set aside in the manner known to law it is a valid decree, and the revision petitioner is entitled to treat it as one. Hence, the revision petitioner, having waited for next 11 months, anticipating the respondent to file any petitions that she has now filed, chose to marry again. It is not that the respondent did not know about these developments, since even in the copy of the petition in M.C No. 5 of 2009 she has disclosed the same. Still she took another five months for filing the applications for condonation of delay.

9. The marriage contracted by the revision petitioner post the ex-parte decree passed by the court, that too, after 11 months since the date of decree, cannot be said to be invalid. After all in matrimonial causes, litigants invest their lives, and they must be given their right to live their life completely rather than wasting it in litigation. Viewed in this context, this Court necessarily has to consider the conduct of the respondent. Even prior to the passing of the decree and also subsequent to the same, it appears that the respondent, a management graduate, who either knows, or at least ought to have known the implications of legal proceedings, but has taken the judicial process far too lightly. In fact, this Court on an earlier occasion has commented on her conduct in its Order in Tr.C.M.P. (MD) No.70 of 2010.

10. The Court generally expects the parties to be diligent and grants reasonable elasticity to its process for enthroning the substantial justice in the cause. The trial court appears to have thought it fit that the condonation of delay may uphold justice for the respondent, but it omitted to see the other side. Here is the revision petitioner, who has validly married a second time, that too after 11 months since the date of the exparte decree for dissolution of marriage. If justice for the respondent alone is accorded primacy, then, the present wife of the revision petitioner will be driven to fond for herself, and the revision petitioner will be denied the comfort of both the women who have come into his life. The life of law is not just logic, but also experience. The reality which the revision petitioner faces is not a hypothesis but something very real. When the court exercises its discretion for condonation of delay, it cannot ignore the realities and the subsequent developments, which affect the lives of the parties. After all, the revision petitioner has married not before the time for appeal, or not before the time provided for filing any petition for setting aside the ex-parte decree. Having stated thus, this



Court also records that its approach possibly might have been different, if the revision petitioner still remained unmarried.

11. Given the factual background on which the respondent has filed these petitions, this Court considers that the cause adduced by her is not satisfactory, more so when the delay of five months since the filing of M.C.No.5 of 2009 (seeking maintenance) without any explanation.

12. In conclusion, the revision petitions are allowed. Accordingly, the order passed in I.A.No.130 of 2010 in H.M.O.P.No.259 of 2006 and I.A.No.425 of 2009 in H.M.O.P.No.71 of 2005 on the file of the Principal Subordinate Judge, Thiruchirappalli are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar(CS)

CM

To

The Principal Subordinate Judge,
Tiruchirappalli.

+1 CC to Mr.R.SUBRAMANIAN, Advocate SR-17214.

+1 CC to Mr.J.MARIA ROSELINE, Advocate SR-17245.

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