



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2020

CORAM :

THE HONOURABLE MRS. JUSTICE S. ANANTHI
C.R.P. (MD) Nos. 1567 & 2045 of 2015 (NPD)
and M.P. (MD) No. 1 of 2015 in
CRP (MD) No. 1567 of 2015

Selvi @ Tamil Selvi

...Petitioner/Petitioner/Respondent
in both CRPs.

Vs.

S.K. Yesu Patchaimal

...Respondent/Respondent/Petitioner
in both CRPs.

COMMON PRAYER : Petition filed under Article 227 of Constitution of India, against the Fair and decreetal order, dated 09.04.2015 made in I.A. Nos. 8 & 9 of 2014 in HMOP No. 169 of 2012 on the file of the Family Court, Dindigul.

In both CRPs.

For Petitioner : Mr. T. Lenin Kumar

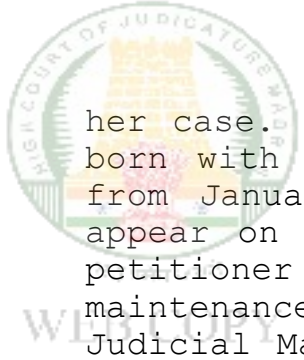
For Respondent : Mr.S.C. Herold Singh

COMMON ORDER

These petitioner have been filed, against the Fair and decreetal order, dated 09.04.2015 made in I.A. Nos. 8 & 9 of 2014 in HMOP No. 169 of 2012 on the file of the Family Court, Dindigul.

2. The respondent herein/husband has filed a petition in HMOP No. 169 of 2012 on the file of the Family Court, Dindigul against the revision petitioner herein/wife, seeking divorce. In the said HMOP, an exparte order was passed on 15.03.2013 against the revision petitioner herein. Against the said order, the revision petitioner herein has filed a petition in I.A. No. 8 of 2014 in HMOP No. 169 of 2012 under Section 5 of Limitation Act, prays to condone the delay of 49 days in filing the exparte decree and a petition in I.A. No.9 of 2014 in HMOP No. 169 of 2012 was filed, under Section 9 rule 13 of CPC to set aside the exparte decree, dated 15.03.2013 passed against the revision petitioner in HMOP No.169 of 2012, but there was a delay of 49 days in filing the petition. Both the petitions were dismissed on 09.04.2015. Hence, the petitioner is before this Court.

3. It is contended by the learned counsel appearing for the petitioner that the Court below ought to have allowed the petition on the ground that unless the petition is allowed and the petitioner is permitted to advance her arguments, she cannot prove



her case. It is further contented that since the petitioner's son born with cyst, she gives treatment to her son during the period from January, 2013 to June 2013 and hence, she was not able to appear on the date of hearing. It is further contented that the petitioner has filed a petition against the respondent seeking maintenance in MC No. 2 of 2012 before the District Munsif Cum Judicial Magistrate Court, Oothukottai and the same was allowed on 07.09.2012, but, till date the respondent has not come forward to comply with the order passed by the Court below. It is further contented that the Court below ought to have seen that there was no enormous delay in filing the petition to set aside the ex-parte decree. Hence, he prayed to allow the Civil Revision Petition.

4. The learned counsel appearing for the respondent herein submitted that the petition is not maintainable either in law or on facts and the same is liable to be dismissed. He further submitted that the petitioner has not produced any medical records pertaining to alleged treatment. He further submitted that the petitioner has threatened to give a false dowry complaint if the respondent not give a sum of Rs.10 lakhs. He further submitted that the petitioner has not explained delay of each and every day and this petition is filed with false averments. Therefore, the petitioner has to be dismissed with costs.

5. Considering the facts of the case, the petitioner had stated in both the petitions that on 05.12.2013, since a child was born to her with cyst the minor child was undergone surgery and follow up treatment and hence, she could not attend the Court on 05.12.2013. After recovery of the child, she came to know the exparte decree passed by the Court below. The respondent herein has objected that, eventhough the decree was passed on 15.03.2013, an exparte decree was passed on 18.12.2012 . The child was not gone under any surgery and hence, the petitions may be dismissed. No documents filed on the side of the petitioner for surgery was conducted and further, no reason was stated for non-appearance of the revision petitioner. The respondent herein has filed a HMOP petition seeking divorce. The HMOP petition would decide a life of a woman and also a child. Therefore, it is necessary to give an one more opportunity to the petitioner and the delay is only 49 days. The delay may be condoned with costs.

6. In the result, the Civil Revision Petitions are allowed. The revision petitioner is directed to remit a sum of Rs.1,000/-as Costs, to the Legal Services Authority attached to this Bench, Madurai, on or before **04.01.2021**, if the revision petitioner fails to comply with the condition, the order shall stands cancelled automatically. Consequently, connected miscellaneous petition is closed.



7. Post the matter for reporting compliance, on 05.01.2021.

Sd/-

Assistant Registrar

// True Copy //

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Sub Assistant Registrar(CS)

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NOTE:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judge, Family Court, Dindigul.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

Copy To:-

1.The Officer In-charge,
High Court Legal Services Committee,
Madurai Bench of Madras High Court, Madurai.

2.The Section Officer ,Judicial Posting Section,
Madurai Bench of Madras High Court, Madurai.

Common Order made in
C.R.P. (MD) Nos. 1567 &
2045 of 2015 (NPD)
22.12.2020

KM(CO)

AP(22/12/2020) 3P 6C