



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP(MD)No.2347 of 2019andCMP(MD)No.12391 of 2019

WEB COPY

M.Chitra @ Abirami

... Petitioner

versus

Varichiyur Selvam @ Selvaraj

... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order dated 16.10.2019 made in I.A.No.22 of 2014 in H.M.O.P.No.34 of 2014 passed by the Principal Sub Court, Tenkasi.

For Petitioner	:	Mr.B.Natarajan
For Respondent	:	Mr.S.Suresh Kumar

ORDER

The revision petitioner herein is the wife and the respondent herein is the husband.

2. The petitioner/wife filed a petition in H.M.O.P.No.34 of 2014, before the Principal Sub Court, Tenkasi, seeking divorce from her husband. Since the respondent/husband has not appeared, an ex parte order was passed by the learned Principal Sub Judge, Tenkasi, vide order dated 07.07.2015. Aggrieved over the same, the respondent/husband filed an application to set aside the ex parte order dated 07.07.2015 passed in H.M.O.P.No.34 of 2014 along with the application in I.A.No.22 of 2014 in H.M.O.P.No.34 of 2014 to condone the delay of 838 days. After considering the reasons stated in the affidavit filed by the husband, the learned Principal Sub Judge, Tenkasi, vide order dated 16.10.2019, condoned the delay of 838 days in filing the application to set aside the ex parte order dated 07.07.2015 passed in H.M.O.P.No.34 of 2014 and allowed the application accordingly. Challenging the same, the present Civil Revision Petition has been filed.

3. Learned counsel appearing for the petitioner/wife submitted that the respondent/husband is a history sheeter and the reason stated by the respondent that since he was in judicial custody till 2016, he was not aware of the proceedings in H.M.O.P.No.34 of 2014, cannot be sustainable. However, the learned Principal Sub Judge failed to consider the facts of the case and mechanically condoned the delay, which warrants interference.



4. Heard and perused the materials on record.

5. On reading of the entire materials available on record, there is no dispute with regard to the relationship of the parties. The wife/petitioner filed a petition in H.M.O.P.No.34 of 2014 for divorce, in which, the husband/respondent has not appeared, since he was in judicial custody and hence, ex parte order was passed on 07.07.2015. Subsequently, the husband/respondent filed the application to set aside the ex parte order dated 07.07.2015 passed in H.M.O.P.No.34 of 2014 along with the application in I.A.No.22 of 2014 in H.M.O.P.No.34 of 2014 to condone the delay of 838 days in filing the application to set aside the ex parte order. The learned Principal Sub Judge, Tenkasi, after considering the reasons stated in the affidavit, condoned the delay and allowed the application.

6. Since the litigation between the parties relates to matrimonial dispute, the parties can adjudicate the matter on merits. Furthermore, the Court below, by considering the reason assigned by the respondent that since he was in judicial custody till June 2016, he was not aware of the proceedings in H.M.O.P.No.34 of 2014, has allowed the application filed by him and therefore, this Court does not find any reasons to interfere with the order passed by the Court below.

7. Accordingly, the Civil Revision Petition is dismissed. However, this Court directs the learned Principal Sub Judge, Tenkasi, to take up the application to set aside the ex parte order dated 07.07.2015 passed in H.M.O.P.No.34 of 2014 and dispose of the same in accordance with law. On restoration of H.M.O.P.No.34 of 2014, the learned Principal Sub Judge, Tenkasi, is further directed to dispose of H.M.O.P.No.34 of 2014 in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs.

SD/-

10.03.2020

This Petition having been posted on 12.03.2020 "For Being Mentioned" in pursuance to the order of this Court dated 10.03.2020 and made herein in the presence of the abovesaid Advocate, this Court made the following Order:-

This Civil Revision Petition is listed today under the caption 'for being mentioned' at the instance of the learned counsel for the petitioner.

2.The petitioner has filed this Civil Revision Petition challenging the order passed by the trial Court in allowing the application to condone the delay of 838 days in filing a petition to set aside the ex parte order passed on 07.07.2015. This Court, by order dated 10.03.2020, dismissed the Civil Revision Petition,



directing the Principal Sub Judge, Tenkasi to take up the application to set aside the *ex parte* order dated 07.07.2015 passed in H.M.O.P.No.34 of 2014 and dispose of the same in accordance with law.

3.The learned counsel for the petitioner would submit that the application filed by the respondent in I.A.No.1 of 2019 in H.M.O.P.No.34 of 2014 to set aside the *ex parte* order dated 07.07.2015 was dismissed on 05.03.2020 by the Principal Sub Court, Tenkasi.

4.Since I.A.No.1 of 2019 itself was dismissed, nothing survives in this Civil Revision Petition. Registry is directed to incorporate this order in the order dated 10.03.2020 and issue fresh order copy.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mj

To

1. The Principal Subordinate Judge,
Tenkasi.

CRP (MD) No.2347 of 2019
10.03.2020

AP(15/06/2020) 3P 2C