

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.4909 of 2021
and Crl. MP No.3143 of 2021

S. Kamesh Kannan

...Petitioner

vs.

1. G.Sumithra Devi

2. Minor Kayra Rabia Nadar,
Rep. By her mother G.Sumithra Devi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 07.01.2021 made in Crl. M.P. No.29 of 2020 in MC No.36 of 2015 on the file of the Judicial Magistrate, Additional Mahila at Alandur in so far as the onerous condition to pay 60% of the arrears of maintenance amount is concerned by allowing this Criminal Original Petition.

For Petitioner : Mr.A.V.Arun

ORDER

This petition has been filed challenging the order passed by the Court below imposing a condition to the petitioner to deposit 60% arrears of maintenance till the date of order, while allowing the petition filed by the petitioner to condone the delay of 1130 days in filing the petition to set aside the exparte order.

2. The respondents filed a maintenance case against the petitioner and the petitioner was set exparte and the Court below ordered the petitioner to pay a sum of Rs.8,000/- to the first respondent wife and Rs.6,000/- to the second respondent child as monthly maintenance. According to the petitioner, notice was not duly served on him and he was not aware about the initiation of proceedings by the respondents. Immediately on coming to know the same, an application was filed before the Court below to set aside the exparte order with a delay of 1130 days.

3. The Court below on considering the facts and circumstances of the case and also of the fact that the notices sent to the petitioner was returned as intimation served-unclaimed, thought it fit to give an opportunity to the petitioner to contest the case on merits. Therefore, the Court below allowed the application by imposing a condition to the effect that the petitioner must deposit 60% arrears of maintenance till the date of the order within one month. Aggrieved by the condition imposed by the Court below, the present Petition has been filed before this Court.

4. Mr.A.V.Arun, learned counsel appearing on behalf of the petitioner submitted that the petitioner had filed a petition seeking for divorce against the first respondent in HMOP No.129 of 2018 and the petition was allowed by an order dated 22.01.2019. The learned counsel submitted that the marriage was dissolved between the petitioner and the first respondent. The learned counsel further submitted that the petitioner was not served any notice in the maintenance case and the same is evident even from the order passed by the Court below. The learned counsel submitted that the Court below has imposed an onerous condition and that the petitioner is also willing to comply with any reasonable condition and the petitioner must be given an opportunity to contest the maintenance case on merits.

5. This Court has carefully considered the submissions made by the learned counsel of the petitioner and also the materials available on record.

6. In the considered view of this Court, the Court below has exercised its discretion while allowing the application filed by the petitioner to condone the delay in filing the application to set aside the *exparte* order. This court does not find any illegality or infirmity in the discretion exercised by the Court below. Even if the petitioner has reservation in paying maintenance to the first respondent, he is duty bound to pay maintenance to the second respondent, who is the child of the petitioner. The Court below has directed the petitioner to deposit 60% of the arrears of maintenance. This is a case where the maintenance petition was filed in the year 2015 and the order was passed in the year 2016 and the petitioner wants to contest the case on merits in the year 2021. If the petitioner wants to contest the case on merits, the petitioner has to make some payment towards maintenance and the condition imposed by the Court below is reasonable.

7. In view of the above, this Court does not find any ground to interfere with the order passed by the Court below. However taking into consideration the facts and circumstances of the

case, the petitioner is granted time to comply with the condition imposed by the Court below. The petitioner is permitted to pay 60% arrears of maintenance as directed by the Court below in two instalments. The first instalment shall be paid within a period of four weeks from today and the second instalment shall be paid within a period of four weeks thereafter. If the petitioner fails to comply with any of the conditions imposed by this Court, the condone delay petition filed by the petitioner shall stand automatically dismissed.

8. This Criminal Original Petitions is disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jv

To

1. The Judicial Magistrate,
Additional Mahila Alandur.

2 The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1 CC to Mr.A.V.Arun, Advocate sr 15781.

CrI.O.P No.4909 of 2021
and CrI. MP No.3143 of 2021
सत्यमेव जयते

SP(23/03/2021)

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