



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.762 of 2020

N.Vijayashree

... Petitioner

Vs.

S.T.Sundara Babu

... Respondent

Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set aside the Fair and Decreetal order dated 20.09.2019 in I.A.No.5894 of 2018 in O.P.No.2308 of 2017 on the file of learned VI Additional Principal Judge, Family Court, Chennai.

For Petitioner : Mr.Sai Krishna for
Mr.M.K.Kumaraguru

For Respondent : Mr.M.S.Soundararajan

O R D E R

The present Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the order passed in I.A.No.5894 of 2018 in O.P.No.2308 of 2017 on the file of learned VI Additional Principal Judge, Family Court, Chennai dated 20.09.2019.

2. The Civil Revision Petitioner, who is the wife of the respondent seems to have filed I.A.No.5894 of 2018 in O.P.No.2308 of 2017 under Section 5 of Limitation Act praying to condone a delay of 257 days in filing the restoration petition in O.P.No.2308 of 2017.

3. The respondent / husband had filed O.P.No.3650 of 2015 before the learned Principal Judge, Family Court, Chennai under Section 9 of Hindu Marriage Act, 1995 seeking for restitution of conjugal rights alleging that after the girl child was born on 21.07.2014, the wife did not turn back to the matrimonial home.



The above petition was allowed exparte by order dated 14.06.2016. Thereafter, the respondent / husband seems to have approached the Family Court, Chennai and filed O.P.No.2308 of 2017 seeking for divorce on the ground of cruelty and desertion. This O.P. Was also came to be allowed in favour of the husband by order dated 23.01.2018. Thereafter, wife had filed I.A.No.5894 of 2018 to condone the delay of 257 days in filing the restoration petition in H.M.O.P.No.2308 of 2017 and to set aside the exparte judgment and decree made in the above O.P. Dated 23.01.2018 and to restore the above H.M.O.P. On file.

4. The learned VI Additional Judge, Family Court, Chennai had dismissed the said petition, viz., I.A.No.5894 of 2018 holding that the reasons proposed by the wife for condoning the delay in filing the petition to set aside the exparte decree is not convincing in view of the fact that each day delay was not explained properly and hence the court does not find it proper to condone the exorbitant delay of 257 days and dismissed the application, as against which, the present Revision Petition is filed by the wife.

5. The learned counsel appearing for the petitioner / wife contended that the husband / respondent herein had deserted the petitioner and filed H.M.O.P.No.3650 of 2015 on the allegation that the wife demanded a share in the property of the parents of the husband as a condition precedent for living together. Since the husband could not meet the demands, the wife left the husband and started to live with her parents, which forced the husband to file a petition for restitution of conjugal rights. However, when the wife received the notice in H.M.O.P.No. 3650 of 2015, immediately, the wife approached the husband and enquired about the same, but the husband had asked her to neglect the notice, as it is only a formal notice because it is a petition filed for living together. Believing the husband's words, the wife did not take part in the family court proceedings.

6. The learned counsel further submitted that not knowing the pendency of the H.M.O.P., the wife, as usual, went and stayed with the husband for some time and returned to her parents house at the instance of the husband's instruction. Subsequently, the husband had filed O.P.No.2308 of 2017 giving a wrong address and obtained an order of exparte divorce. Thereafter, the husband had contracted second marriage with one Geethapriya. In fact, the wife, who attended the first death anniversary of husband's father, viz., father-in-law that took place in his residence on 03.02.2018, the entire family did not inform her about the dissolution of the marriage that was ordered by the Family Court on 23.01.2018. Only after the second marriage was solemnized, the wife came to know about the



divorce and restitution of conjugal rights application filed by the husband by searching the court records. Thereafter, she filed a petition for condoning the delay, which was erroneously dismissed by the court below on the ground that each and every day delay was not properly explained.

7. In contra, the learned counsel appearing for the respondent / husband filed a typed set and two additional typed sets to prove the genuineness especially by filing dates and events to impress upon the court to express that the wife had deliberately left the house and even though she received notice and summons from the court, had wantonly abstained from the court proceedings and upon perusal of the said documents, the Family Court has come to the correct conclusion in dismissing the condonation petition, which does not warrant any interference in the hands of this Court and hence sought to dismiss the petition.

8. Heard the learned counsels appearing on either side and perused the records available.

9. This Court is not able to accept the contention raised by the learned counsel for the respondent, especially when the respondent's counsel arguing in favour of the order passed by the said learned VI Additional Judge, Family Court, Chennai dismissing the condonation petition filed under Section 5 of Limitation Act to condone 257 days delay in restoring the O.P.No.2308 of 2017. On perusal of the typed set of papers filed on behalf of the respondent, which is the compilation of all the proceedings that took place ever since O.P. Filed under Section 9 of Hindu Marriage Act seeking restitution of conjugal rights, it is no doubt that the observation of Family Court Judge that each and every day delay need to be explained is correct, but practically, to explain each and every day delay is not possible, unless a delay is few days. When the number of days of delay is more, it is inhumanly impossible to cull out the reasons for each and every day delay. The phrase 'each and every day' has been wrongly interpreted in many of the Judgments dismissing the petition filed for condonation of delay.

10. It is sufficient that the two reasons for the delay is explained as far as possible, near to the truth. However, the Hon'ble Supreme Court in various Judgments has directed the High Courts and Subordinate Courts to take a lenient view as far as possible in favour of the parties seeking to condone the delay in restoring themselves in the litigation. No man shall be condemned unheard as far as possible the litigation should meet the ends of justice by affording an opportunity to either parties, however, unimaginary frivolous explanation should also be condoned. The Subordinate Courts should necessarily need to



take a lenient view while deciding the petition to condone the delay, especially, for the matters in Family Court.

11. In the present case, on perusing the records filed by the husband and conjoint reasons stated in the affidavit filed in support of I.A.No.5894 of 2018 filed by the wife / petitioner, there arises a lot of doubts, the manner in which, the husband has moved the Family Court. It is seen from the records that O.P.No.3650 of 2015 was filed on 22.09.2015, which service of summons is accepted by the petitioner / wife. However, she denies any separation from her husband and the husband had deceived stating that the notice is only for joining together. This restitution of conjugal rights in O.P.No.3650 of 2015 was ordered on 14.06.2016. It is also seen from the records that the respondent seeking divorce in O.P.No.2308 of 2017 seems to have filed on 22.06.2017. However, there seems to be a notice dated 14.02.2017 sent on behalf of wife to the respondent on certain allegations. This was replied by a reply notice through husband's counsel on 06.03.2017. On perusing the notice, the husband has not stated anything about the petition filed by him in O.P.No.3650 of 2015 that too when that was decreed on 14.06.2016 in favour of the husband. The reply notice does not contain anything about the court proceedings. Immediately, thereafter, the husband has filed the divorce petition in O.P.No.2308 of 2017.

12. Apart from that, the manner in which each and every information produced by the husband, especially, the call records and all other trivial issues that was produced before the Family Court picturises the manner in which the husband has in a hurried manner, contracted the second marriage, several doubt arises for this Court to consider upon. However, the petition filed by the petitioner seeking for condonation of 257 days delay should only be considered in favour of the wife that too when the wife has pleaded that she was deceived by the husband when the summons were served on her and that too when they were living together and the wife had gone only for the delivery. Apart from that, since the husband was living in a joint family with his parents and promised to take the wife sooner or later after seeing a separate house and asking the wife to stay at her parents place, the benefit of doubt that arises is that the manner in which the husband had filed the case in contradicting statement from restitution of conjugal rights and the petition filed for dissolution of marriage, the benefit of doubt should be held in favour of the wife. Merely because the husband has allegedly contracted the second marriage, the condonation petition to restore the exparte H.M.O.P, dissolving their marriage should not be dismissed at the threshold on the ground that each and every day delay was not properly explained.



13. In view of the above discussions, this Court is of the view that the learned VI Additional Judge, Family Court, Chennai should have taken a lenient view, rather than being harsh on the wife, who is having a female child born through the respondent through their wed lock, ought to have allowed the condonation petition. The reasons adduced by the Family Court is not convinceable, hence it is liable to be set aside.

Accordingly, the present Civil Revision Petition is allowed by setting aside the order dated 20.9.2019 made in I.A.No.5894 of 2018 in O.P.No.2308 of 2017 and hence the I.A.No.5894 of 2018 filed by the petitioner / wife seeking to condone the delay of 257 days in filing a restoration petition in H.M.O.P.No.2308 of 2017 is allowed and the said H.M.O.P.No.2308 of 2017 is restored to file. The learned VI Additional Principal Judge, Family Court, Chennai is directed to issue notice to the respondent, conclude the proceedings after affording sufficient opportunities to the petitioner and the respondent and pass orders on merits and in accordance with law, uninfluenced with any of the observations made by this Court in this petition.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The VI Additional Principal Judge,
Family Court,
Chennai.

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.T.Saikrishnan, Advocate Sr.28342
+1cc to M/s.Soundararajan, Advocate Sr.28312

C.R.P.No.762 of 2020

ln[co]
srg 18/08/2021