

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.(NPD)No.410 of 2021

Durai
S/o.Ranganathan

...Petitioner

Vs

Aswini @ Hamsaveni

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decretal order dated 24.02.2017 passed in I.A.No.10 of 2015 in H.M.O.P.No.27 of 2010 on the file of the Subordinate Court, Arni.

For Petitioner : Mr.S.Ravichandran Sundaresan

ORDER

The present revision petition has been filed challenging the order dated 24.2.2017 passed in I.A. No.10/15 in HMOP No.27 of 2010 by the Subordinate Judge, Arni, allowing the petition filed by the petitioner on condition that the petitioner deposits 75% of the interim maintenance amount from the date of filing of HMOP No.27 of 2010 till the date of

dismissal, failing which the petition for condonation would stand dismissed.

2. It is the case of the petitioner that though HMOP No.27/10 was listed for the appearance of the petitioner on 18.6.2014, however, the petitioner could not appear as he was suffering from jaundice and was taking native treatment over the past nine months. Due to the absence of the petitioner, HMOP No.27 of 10 was dismissed on 18.6.2014, which came to the knowledge of the petitioner when he met his counsel, which resulted in the delay of 155 days in filing the petition. Therefore, it was prayed that the condonation petition be allowed and the original petition be restored back to file.

3. The said stand of the petitioner was resisted by the respondent contending that only for the purpose of evading arrest due to non-payment of interim maintenance amount, the petitioner had not appeared before the Court on 18.6.2014 leading to the dismissal of the original petition. It is the further stand of the respondent that though interim maintenance at Rs.5,000/- was ordered way back on 24.1.2014 in the

application in I.A. No.30 of 2013, the petitioner did not pay the amount resulting in the filing of E.P. No.78 of 2014. Though summons sent in the said petition was received by the petitioner, however, he did not appear resulting in a warrant of arrest being issued and to evade the same, the petitioner absconded resulting in the dismissal of the execution petition. Thereafter, E.P. No.78 of 2015 was filed once again and in order to extricate himself from the arrest, the present petition has been filed seeking restoration of the original petition with a fictitious explanation as if the petitioner was suffering from jaundice preventing him from appearing before this Court.

4. Before the court below, the parties were examined and documents were marked and based on the oral and documentary evidence, the court below, held that the petitioner, only to absolve himself from the payment of the interim maintenance had left the original petition to be dismissed and, thereafter, to prevent himself from being arrested, has filed the present petition for condonation of delay. However, taking into consideration the interest of the parties and also the children of the petitioner and the respondent out of the wedlock and that

the respondent has only been taking care of the two children and further interim maintenance having not been paid to the respondent inspite of the order of the court, allowed the petition on condition that the petitioner shall deposit 75% of the maintenance amount ordered from the date of filing of the original petition till the date of dismissal of the petition within a particular time frame and submit proof thereof before the court, failing which the petition would stand dismissed. Aggrieved by the said order, the present revision petition has been preferred.

5. Learned counsel appearing for the petitioner submitted that the condition to deposit 75% of the interim maintenance amount, as ordered by the court below, is not only onerous, but it is also contrary to law. It is the further submission of the learned counsel for the petitioner that imposition of condition of 75% payment of interim maintenance of is harsh, unreasonable and further the said order is impermissible while dealing with an application relating to limitation. It is the further submission of the learned counsel for the petitioner that the reason for the petitioner not able to appear before the court due to his illness and taking treatment has not been appreciated in proper perspective by the

court below and that the imposition of onerous condition such as the one causes great hardship and prejudice to the petitioner. Therefore, learned counsel prays for allowing the present petition.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. The facts as culled out by court below relating to the dispute and the various petitions filed by either parties and the orders passed thereon are not in dispute. It is also not in dispute that though interim maintenance at Rs.5000/- per month has been ordered to be paid by the petitioner to the respondent, however, till date, the petitioner has not paid even a pie to the respondent. It is also not in dispute, as found recorded in the order of the court below, that it is the respondent/wife, who is taking care of their two children of whom, one is a mentally challenged child. Further, it is also not in dispute that the petitioner had received the summons relating to E.P. No.78 of 2014 and, thereafter, did not appear before the Court due to which warrant for his arrest was also issued, which could not be executed due to the abscondance of the petitioner.

8. To counter the said findings recorded by the court below, no material whatsoever has been placed by the petitioner before this Court. It is to be pointed out that it is the duty of the lawfully wedded husband to take care of his wife and children and even in case of any marital proceedings before the Family Court, it is the duty of the husband to maintain his wife and children. The concept of maintenance has been carved out only for the said purpose. In spite of an order to the petitioner to pay maintenance, the petitioner, in utter disregard to the said order, has flouted the said order and had not paid maintenance. In such a backdrop, the court below, to render substantial justice has thought it fit to impose the condition of payment of 75% interim maintenance due and payable to the respondent by the petitioner, for the purpose of condoning the delay, which order cannot be said to be improper, onerous or unreasonable.

9. The Hon'ble Supreme Court in ***Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai***, (2012 (5) SCC 157) on the question of limitation and the underlying principle governing the law of limitation, held as under :-

“14. We have considered the respective arguments/submissions and carefully scrutinized the record. The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.

15. The expression “sufficient cause” used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not

defeated merely because of delay.

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23. *What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.*

24. *What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”*

10. As succinctly observed by the Hon'ble Apex Court, the law of limitation was not enacted for the purpose of defeating the rights of the parties, rather, it has been enacted only to safeguard the rights of the parties. However, it has been emphasised that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. Therefore, without there being a sufficient cause shown, delay should not be condoned.

11. In the case on hand, though it is the claim of the petitioner that he was suffering from jaundice and was taking native treatment, however, no material has been placed by the petitioner to prove the said fact. In the absence of the same, the sufficient cause for the delay having not been properly explained, the court below could have very dismissed the petition outright. However, with a view to render substantial justice to either side, the court below had passed the above conditional order,

which would enure to the benefit of either side. In the considered opinion of this Court, the order passed by the court below is neither illegal nor arbitrary and it is just and reasonable and the same does not warrant any interference at the hands of this Court.

12. For the reasons aforesaid, this petition is devoid of merits and, accordingly, the same is dismissed. However, time is extended by four weeks from the date of receipt of a copy of the order to deposit the amount of Rs.67,500/-, being the 75% amount towards interim maintenance as ordered by the Court below.

04.03.2021

Index: Yes/No
Speaking order/Non Speaking order
sbn

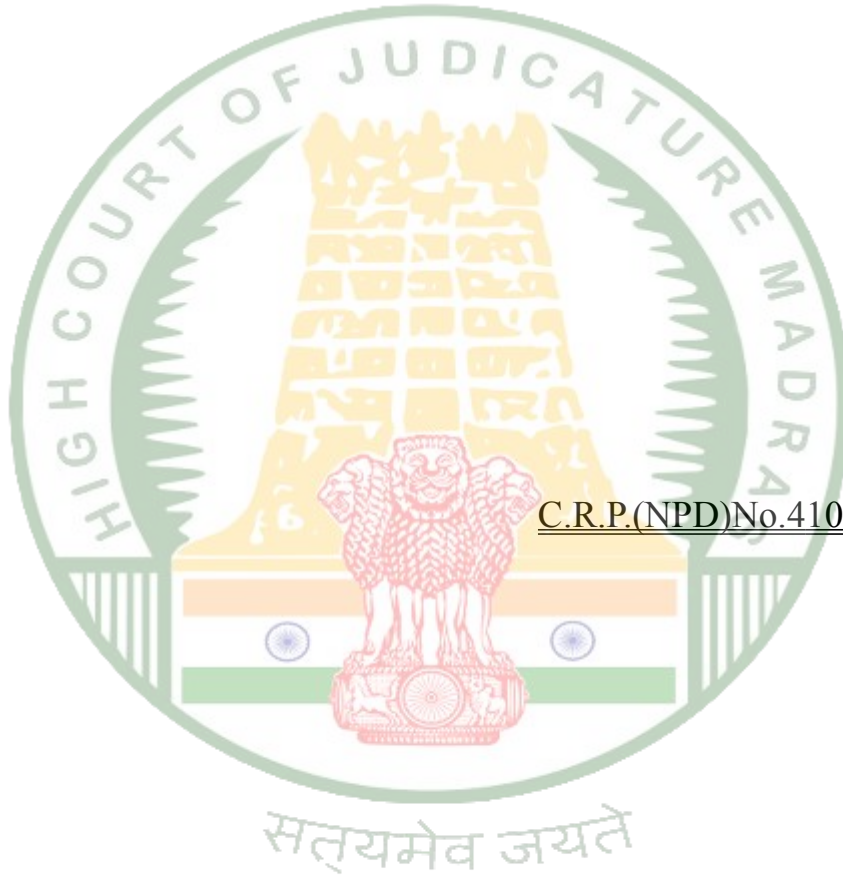
To

The Subordinate Judge,
Arni.

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V.BHAVANI SUBBAROYAN, J.

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