

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.1352 of 2016
and C.M.P.No.7585 of 2016

Annamalai

... Petitioner

Vs.

Manimozhi

... Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decretal Order dated 10.02.2016 in I.A.No.48/2014 in unnumbered H.M.O.P..../2015 (old HMOP 47/2009 on the file of the II Additional Sub Court, Villupuram) on the file of the Family Court, Villupuram, and thereby allow the revision.

For Petitioner : Mr.D.Vasanth
for Mr.N.Suresh

For Respondent : No Appearance

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed challenging the Order of the learned Family Court Judge, Villupuram dated 10.02.2016 passed in I.A.No.48 of 2014 in the old HMOP.No.47 of 2009 on the file of the II Additional Sub Court, Villupuram.

2. Heard the submission of the learned counsel for the petitioner. No representation for the respondent.

3. The petition in I.A.No.48 of 2014 is filed by the respondent – wife to set aside the Order passed in the petition filed to condone the delay of 1068 days in setting aside the *exparte* Decree passed in the Original Petition. After convinced with the reasons stated by the petitioner, the learned Family Court Judge allowed the petition to condone the delay.

4. The learned counsel for the Civil Revision Petitioner submitted that there is an inordinate delay in filing the petition to set aside the *exparte* decree. After getting an order of divorce, the petitioner got married to some other woman and a child also was born out of the said marriage. It is further submitted that the third party interest has been created and hence, it is unfair to allow this Petition. In support of the above contentions, the learned counsel for the petitioner cited the decision reported in **2016 (2) CTC 705 (A.Raja Sundari Vs. Suresh Kumar)**. In the said judgement it is held as under:-

*“14. It would be relevant to consider the case of **Surendra Kumar vs. Krian Devi** reported in **AIR 1997 Raj 63**, where under, it has been held that when there is a valid remarriage and when the right of the second wife*

intervenies, the petition to set aside the ex parte decree cannot be allowed and the observation is thus :

"6. It has not been disputed before me that after passing of the ex parte decree in favour of the petitioner by the Distt. Judge on 11-8-1992, the petitioner contracted a second marriage after four months. In such a situation, the important question that arises for determination is whether the ex parte decree can be set aside?

7. This question arose in Harjeet Singh v. Guddi's case, (1987) 1 Rajasthan LR 520, and it was held by this Court that when second valid marriage is contracted, it is in the interest of justice to dismiss the application for setting aside the ex parte decree for divorce. Again the same question was considered in Smt. Shimla Devi v. V. Kiran Kumar's case, (1994) 3 WLC 519, and it was held that by contacting a second marriage, the interest of second wife intervenes."

5. The impugned Order has been passed only in condoning the delay in filing the petition to set aside the *ex parte* Decree. When the petition to set aside the *ex parte* Decree is taken on file, it is open to the Civil Revision Petitioner to challenge the same on the grounds which have been now placed before the Court. Since the opportunity for the petitioner to open his objections before the Family Court in the event of the petition to set aside the *ex parte* decree is taken on file, I do not find any reason for any interference as of now in the Order now under challenge.

R.N.MANJULA,J.

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In the result, this Civil Revision Petition is dismissed and the Order of the Family Court Judge, Villupuram dated 10.02.2016 passed in I.A.No.48 of 2014 in the old HMOP.No.47 of 2009 on the file of the II Additional Sub Court, Villupuram, is confirmed. No costs. Connected civil miscellaneous petition is closed.

Speaking/Non-speaking
Index: Yes/No

30.07.2021

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To

1.The Family Court Judge,
Villupuram.

2.The I Additional Sub Court,
Villupuram.

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

C.R.P.(NPD).No.1352 of 2016