

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (NPD) No.1013 of 2021
and
C.M.P.No.8131 of 2021

Y.Mohana Sundari @ Sundari

..Petitioner/Respondent/Petitioner

Vs

K.Ashok

..Respondent/Petitioner/Respondent

Civil Revision Petition filed under Section 115 of CPC, to set aside the order dated 12.03.2021 passed in I.A.No.1 of 2020 in O.P.No.1330 of 2019 by the learned V Additional Judge, Family Court, Chennai.

For Petitioner

Mr.K.Ravi Anantha Padmanaban

For Respondent

Mr.V.Ramesh

ORDER

This Revision Petition has been filed questioning the order dated 12.03.2021 passed in I.A.No.1 of 2020 in O.P.No.1330 of 2019 which is now pending on the file of V Additional Family Court, Chennai.

2.O.P.No.1330 of 2019 had been filed by the petitioner in the revision petition / wife seeking dissolution of marriage held between her and the respondent herein on the ground of cruelty taking advantage of Section 13(1)(a) of the Hindu Marriage Act, 1955. It is stated that the parties got married on 13.04.1997. They have been blessed with two children, who as on date, have attained the age of majority.

3.The respondent did not join issues in the said Original Petition. Rather he had taken a conscious decision not to participate in the judicial proceedings. There is a responsibility cast on a party who is on issued notice about the filing or institution of any judicial proceedings to respect the Court notice. There must be some fundamental enquiry made regarding the nature of the proceedings. A decision to either appear before the Court or to abstain from the Court is purely the choice of the party. If he takes a decision to abstain from the Court proceedings then at a later stage he should not claim innocence on his part.

4.The respondent herein had not participated in the judicial proceedings. He was set exparte. He had not taken steps to set aside the exparte order.

5.The revision petitioner / petitioner in Original Petition was examined as PW-1. She also marked nine documents. Among the various documents, a copy of the complaint given by the petitioner to the All Women Police Station, Avadi, was also marked as Ex.P8, quite apart from the documents establishing marriage and birth of children. On appreciation of the evidence, an exparte decree was also passed on 27.06.2019.

6.An application seeking to condone the delay of 131 days in filing application to set aside the exparte decree was filed. That application was filed in I.A.No.1 of 2020. The only reason was given that owing to illness of health, the respondent was not able to appear before the Court.

7.However, one crucial aspect which should have been stated is regarding the date of knowledge of the exparte decree. That aspect had not been stated. There is also a responsibility cast on any person who

files an affidavit to substantiate averments by filing necessary documents and subjecting himself for cross-examination and inviting the other side to test the documents during cross-examination.

8.Unfortunately, the respondent in the revision petition and petitioner in I.A.No.1 of 2020 did not take such steps. The said Interlocutory Application came up for consideration and by order dated 12.03.2021, the learned Judge, even though exhibits R1 to R12 had been marked on behalf of the present revision petitioner, had thought it fit to condone the delay. The learned Judge had not given any finding whether the reason advanced for non appearance was correct or not. The learned Judge did not observe that the respondent herein has not grazed the witness box to subject himself for cross-examination to test the reasons given by him.

9.The respondent herein had also not filed any document to substantiate alleged ill health and that he had actually suffered from ill health. However, that reason had been accepted by the learned V Additional Principal Judge, Family Court Chennai. I am not inclined to sustain the said order.

10.The learned Judge relied on **(2015) 6 SCC 353, Bhuvan Mohan Singh Vs. Meena**, wherein the Hon'ble Supreme Court held as follows:-

“The Family Court Judge is expected to be sensitive to the issue, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and the issues ancillary thereto. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. It is hoped that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the objects and reasons of the Family Courts Act.”

11.I find it extremely hard to understand the ratio which the learned V Additional Principal Judge, Family Court Chennai, had applied to condone the delay. The Hon'ble Supreme Court had stated that procrastination should be examined with some seriousness and the Family Court Judge shall remain alert to this and decide the matters as expeditiously as possible.

12.The learned V Additional Principal Judge, Family Court Chennai, had allowed the said application on condition of payment of costs of Rs.25,000/-. The payment of costs will not wipe away the delay. Costs are to be imposed with some rationale behind it. It is to be imposed to bring some solace to the opposite party owing to the acts of omission or commission done by the person who pleads innocence.

13.In this case, the learned Judge, had not given any reason whatsoever to hold that the reason given by the petitioner is acceptable. He just imposed costs of Rs.25,000/-. I am informed that costs have also not been paid.

14.It is stated by the learned counsel for the respondent that the costs were tendered, it was refused to be received. When costs are not received then they must be deposited in court. That step had also been not taken. Application had also not been filed seeking extension of time to pay the costs.

15.It is obvious that the respondent herein is not at all interested in joining issues with the revision petitioner with respect to O.P.No.1330 of 2019. The application to condone delay had been filed only as a matter of routing and not with any reason.

16.I hold that the order passed in I.A.No.1 of 2020 dated 12.03.2021 must be set aside and it is set aside. The exparte decree dated 27.06.2019 shall stand.

17.This Civil Revision Petition is allowed. No order as to costs. Consequently, the connected CMP is closed.

29.04.2021

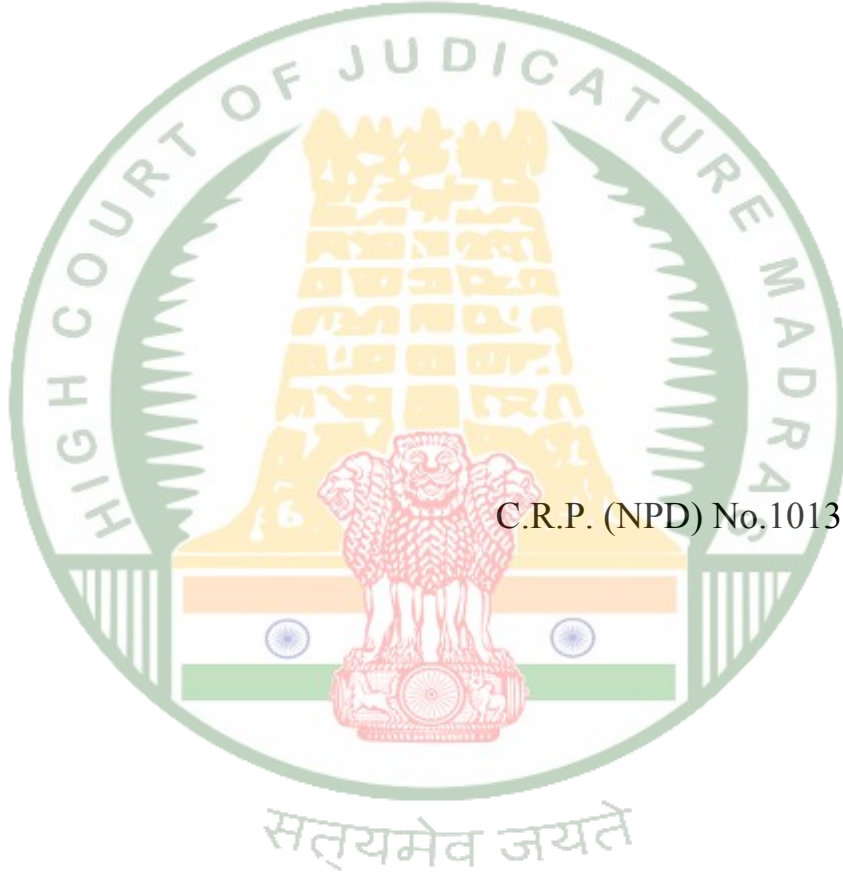
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To
The V Additional Family Court,
Chennai.

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C.V.KARTHIKEYAN,J.

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