

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.P.No.9539 of 2020 in C.M.A. SR.No.56732 of 2020

C.Poongothai

.. Petitioner

-vs-

M.Kuppusamy

.. Respondent

Civil Miscellaneous Petition filed under Section 19(3) of Family Court Act to condone the delay of 814 days in filing the C.M.A. SR. No.56732 of 2020 against the fair and decretal order passed in I.A. No.1888 of 2015 in O.P. No.3894 of 2008 by the V Additional Family Court, Chennai dated 18.07.2017.

For Petitioner : Mr.K.Balaji

For Respondent : Ms.Srividhya Aravindan

ORDER

(Order of the Court was made by T.RAJA, J.)

C.M.P. No.9539 of 2020 in C.M.A. No.SR.56732 of 2020 has been filed to condone the delay of 814 days in filing the appeal against the fair and decretal order dated 18.07.2017 passed in I.A.No.1888 of 2015 in O.P.No.3894 of 2008 by the V Additional Family Court, Chennai.

2. Learned counsel appearing for the petitioner/appellant, assailing the impugned fair and decretal order, submitted that when the respondent filed a petition in O.P.No.3894 of 2008 before the Family Court seeking divorce under Section 13(1)(i) and(i-a) of the Hindu Marriage Act alleging various cruelties, during the pendency of the said petition for divorce, an Original Suit in O.S.No.7 of 2010 was filed by the petitioner seeking a direction to the respondent to pay a sum of Rs.96,000/- as past maintenance and also for permanent injunction restraining the second defendant, their men, agents, servants or anyone under them from disbursing the monetary benefits, such as provident fund, gratuity, salary and other retirement benefits payable to the respondent, in the event of

his retirement till the payment of the past maintenance. Although the respondent herein filed a detailed written statement on 17.8.2010, for the reasons went beyond her control, the appellant was unable to file the counter affidavit to the divorce petition pending before the Family Court. However, the Family Court, after proceeding ex parte against the petitioner, posted the matter for recording of ex parte evidence on 7.10.2015 and accordingly, on the same date, the Family Court allowing the petition filed by the respondent for divorce under Section 13(1)(i) and(i-a) of the Hindu Marriage Act, dissolved the marriage solemnized on 26.04.1974 between the appellant and the respondent. Since on the very same day the petitioner also filed I.A.No.1888 of 2015 to set aside the ex parte decree dated 07.10.2015 in O.P.No.3894 of 2008, the Family Court passed the conditional order, as follows:-

- 'i) Since no counter was filed by the respondent, an exparte order was passed on 07.10.2015. The O.P. for divorce was filed even in the year 2008. The respondent did not file counter till now. It shows that the respondent is causing more delay in the proceedings.
- ii) In the above circumstances of this case this petition is allowed on some conditions. The point is answered accordingly.

In the result, this petition is allowed on condition:-

- a) that the respondent shall file the counter within 3 days from the date of order.
- b) that the respondent shall cross examine P.W.1, when the petitioner file proof affidavit.'

3. In spite of sufficient opportunities granted to the petitioner, she has not complied with the conditions imposed in I.A.No.1888 of 2015 in O.P. No.3894 of 2008 dated 18.09.2017, therefore, the petition was dismissed on 05.12.2017, as against which the petitioner has come to this Court with the appeal along with the petition to condone the huge and unexplained delay of 814 days. Learned counsel appearing for the petitioner further submitted that when the respondent has filed the petition for divorce, since the petitioner was concentrating on the defence of the Original Suit in O.S.No.7 of 2010, inadvertently, the counter affidavit could not be filed, that was put against the petitioner and finally she was proceeded ex parte. As it is a matrimonial case, a final chance may be given, he pleaded.

4. We are unable to find any justification or sufficient cause to condone the huge and long delay of 814 days in filing the appeal. Secondly, a perusal of the conditional order dated 18.9.2017 clearly shows that when the O.P.No.3894 of 2008 was

pending for seven long years, the petitioner did not show any interest to file the counter affidavit. As a matter of fact, the petitioner ought to have filed the counter affidavit within 90 days. Further, Order VIII, Rule 5(2) of the Code of Civil Procedure clearly shows that when the other side has not filed a pleading or reply, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint. Therefore, the Family Court, Chennai, taking note of the conduct of the petitioner in not filing the counter affidavit for seven long years in spite of sufficient opportunities, has not entertained the petition. Therefore, finding no sufficient cause or justification to condone the huge delay, the civil miscellaneous petition stands dismissed. Consequently, C.M.A.No. SR56732 of 2020 stands rejected.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga
To
The V Additional Judge, Family Court,
Chennai.

+1 cc to M/s.K.Balaji, Advocate Sr.No. 7662
+2ccs to Mr.M.Aravindan, Advocate, Sr.No. 7409

C.M.P.No.9539 of 2020 in C.M.A. SR.No.56732 of 2020
PA(CO)
RMP(04/03/2021)