

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.2386 of 2021
and C.M.P. No.18135 of 2021

Saimagesh

...

Petitioner /
Respondent

versus

Nisha

...

Respondent /
Petitioner

PRAYER: Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order dated 22.04.2021 passed by the learned Additional Principal Judge, Additional Family Court, Coimbatore, in I.A.No.1 of 2019 in H.M.O.P.No.882 of 2018.

For Petitioner

:

Mr.T.R.Sathiyamohan

ORDER

This Civil Revision Petition is filed, challenging the order dated 22.04.2021 passed by the learned Additional Principal Judge, Additional Family Court, Coimbatore, in I.A.No.1 of 2019 in H.M.O.P.No.882 of 2018.

2. The learned counsel for the petitioner submitted that, the petitioner filed H.M.O.P.No.882 of 2018 for the relief of divorce under Section 13(1)(ia) of the Hindu Marriage Act against the respondent. Originally, the petition was filed before the Sub Court, Nilgiris. It was transferred at the instance of the respondent to Trichy and then again to Family Court, Coimbatore. The respondent has not filed counter in H.M.O.P.No.882 of 2018 and therefore, she was set *ex parte*. The respondent filed I.A.No.1 of 2019 under Section 5 of the Limitation Act to condone the delay of 213 days in filing the petition to set aside the *ex parte* order passed on 29.10.2018. This petition was resisted by the petitioner alleging that the respondent is deliberately protecting the proceedings by filing transfer petitions and by not filing counter. The learned Additional Principal Judge, considering the rival submissions allowed the petition, on payment of costs of Rs.1,500/- to the petitioner. Challenging the said order, this Civil Revision Petition is preferred.

3. The learned counsel for the petitioner submitted that, the learned Additional Principal Judge has observed in his order that, the respondent cannot say that, she was not aware of the proceedings and that she ought to have

been diligent in filing her counter and proceeding with the case. It is further submitted that, she could have contacted her advocate and follow up the matter. However, it is also observed in the order that being a matrimonial dispute, the contention raised by the respondent that, her husband is willing to reunite with her, cannot be brushed aside lightly. She was taking care of her child. On these reasons, the learned learned Additional Principal Judge brought it fit to condone the delay on payment of costs of Rs.1,500/- to the respondent. It is not correct and therefore, this revision.

4. Considered the submissions of the learned counsel for the petitioner and perused the records.

5. Perusal of the affidavit filed by the respondent shows that, she claims that her husband and his advocate has visited her and promised to reunite with her. That was the reason why she had not followed up the case. She came to know about the *ex parte* decree only after receiving the summons from G.W.O.P.No.532 of 2019 filed by her husband stating that, he is ready to live with her and his door is always opened to her. It is the main reason for the respondent

for not following up the case. In matrimonial proceedings, several attempts are made by the parties and the relatives to find out the possibility of the settlement. Not only in the trial Court but even in the Appellate Court and even in the Hon'ble Supreme Court, efforts have been made to settle the matrimonial dispute between the husband and wife. Therefore, this Court finds no reason to doubt the claim made by the respondent that, she was carried away out by the efforts taken by her husband to reunite with her and that was the reason why, she remained *ex parte*.

6. Be that as it may, now it appears that there is no possibility of settlement, as of now. It is always better to have adjudicated the dispute on merits. In the considered view of this Court, parties must be given reasonable opportunity before the trial Court. It appears that it is the first time the respondent remained *ex parte*. Therefore, the respondent must be given an opportunity to contest the case of the petitioner.

7. In such view of the matter, this Court finds no reason to interfere with the order of the learned Additional Principal Judge, Additional Family Court, Coimbatore and the order dated 22.04.2021 passed in I.A.No.1 of

2019 in H.M.O.P.No.882 of 2018 is hereby confirmed. However, considering the fact that, the divorce petition was filed in 2018, the learned Additional Principal Judge is directed to dispose H.M.O.P.No.882 of 2018 as expeditiously as possible, preferably, within a period of three (3) months from the date of receipt of a copy of this order.

8. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

02.11.2021

Speaking order / Non-speaking order

Index : Yes / No

sri

To

The Additional Principal Judge,
Additional Family Court,
Coimbatore.

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G.CHANDRASEKHARAN, J.

sri



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