

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.1816 of 2021
and C.M.P. No.14220 of 2021

G.Girish Gandhi

...

Petitioner

versus

Akansha Gandhi

...

Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.1 of 2021 in O.P.No.3397 of 2019 on the file of the IV Additional Family Court at Chennai dated 04.08.2021.

For Petitioner : Mr.K.Sumathi

For Respondent : Mr.Maya Krishnan

ORDER

This Civil Revision Petition is filed, challenging the order dated 04.08.2021 passed by the learned IV Additional Judge, Family Court, Chennai in I.A.No.1 of 2021 in O.P.No.3397 of 2019.

2. The learned counsel for the petitioner submitted that, the respondent filed the petition under Section 13(1)(i-a) and 25 of Hindu Marriage

Act, 1955 against the petitioner seeking divorce and permanent alimony. When the matter was posted for filing counter on 05.01.2021, due to heavy rain, the petitioner could not attend the Court, therefore, the petitioner was called absent and set *ex parte* for not filing the counter. Subsequently, the petitioner filed I.A.No.1 of 2021 for setting aside the *ex parte* order dated 17.02.2021 under Order 9 Rule 7 of C.P.C. This petition ought to have been filed within 30 days from the date of order. There is delay of 12 days and there was no petition filed for condoning the delay under Section 5 of the Limitation Act. The learned IV Additional Judge, Family Court, Chennai, dismissed the petition. Against the said dismissal order, this Civil Revision Petition is preferred.

3. The learned counsel for the petitioner further submitted that, the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020* has given certain directions with regard to the extending the period of limitation and accordingly, the period of limitation was extended from 15.03.2020 until further orders. This order was passed on 08.03.2021. Therefore, the petitioner was covered by the order of the Hon'ble Supreme Court and saved from period of limitation. Therefore, the petitioner prays for setting aside the *ex parte* order passed by the

learned IV Additional Judge, Family Court and giving opportunity to contest the divorce petition.

4. The learned counsel for the respondent submitted that, the petitioner is a Crorepathi and he has not paid maintenance to the respondent. The reason stated for not appearing and filing counter on 05.01.2021, cannot be accepted. Therefore, he prayed for dismissal of this petition.

5. Considered the rival submissions and perused the records.

6. It is seen from the submissions made by the learned counsel on both sides, the petitioner was absent for one hearing on 05.01.2021 and the petitioner was set *ex parte* for not filing the counter. Then, while filing I.A.No.1 of 2021 under Order 9 Rule 7 of C.P.C. for setting aside the *ex parte* order, the petitioner also filed counter along with the petition. As pointed out by the learned counsel for the petitioner that the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020 has extended the period of limitation in general law of limitation or under any special laws (both Central or State). The petitioner is

squarely covered by this order and therefore, this Court set aside the order of the learned IV Additional Judge, Family Court, Chennai, passed in I.A.No.1 of 2021 in O.P.No.3397 of 2019 and allow the I.A.No.1 of 2021.

7. Accordingly, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

08.10.2021

Speaking order / Non-speaking order
Index : Yes / No

psa / sri

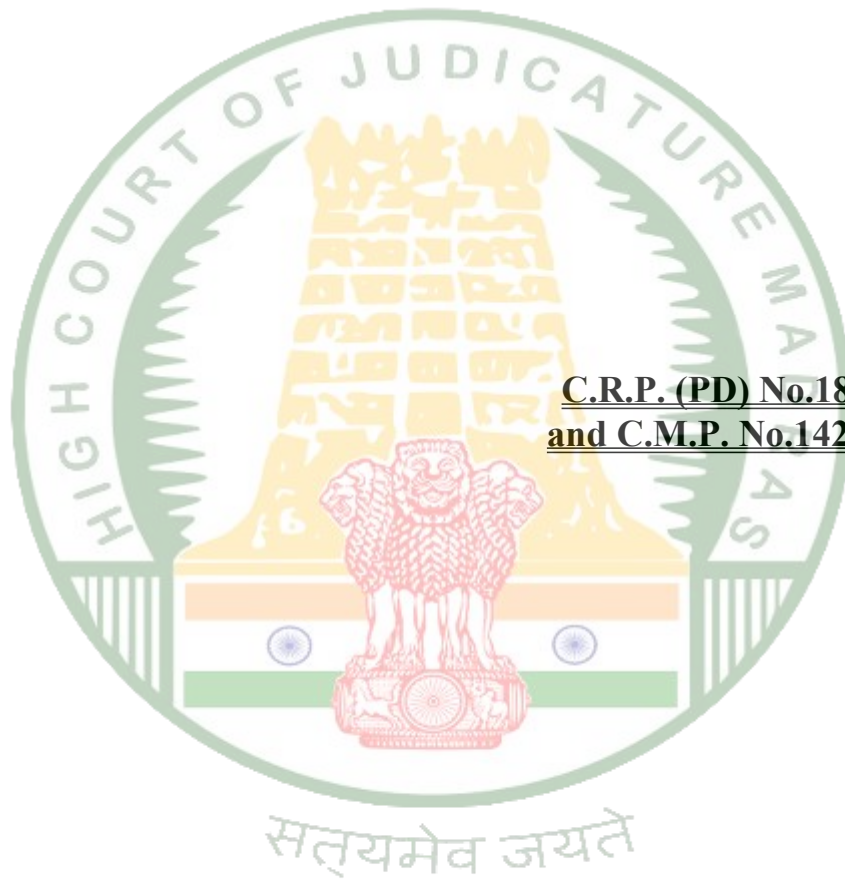
To

The IV Additional Family Court,
Chennai.

सत्यमेव जयते
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G.CHANDRASEKHARAN, J.

psa / sri



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