



*C.R.P.(NPD).No.2470 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

**C.R.P.(PD).No.2470 of 2021**

Radhika

.. Petitioner

Vs.

1.Dhanapal

2.Stalin

.. Respondents

**PRAYER:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the order and decreetal order dated 29.03.2021 passed in I.A.No.72 of 2018 in HMOP.No.31 of 2016 on the file of Sub-Court, Mannarkudi by allowing the CRP with cost through.

For Petitioner : Mr.M.Tamizavel

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### **ORDER**

Challenge in this Revision is to the order of the learned Subordinate Judge, Mannarkudi dismissing the application seeking condonation of delay of 198 days in seeking to set aside the exparte decree for divorce.

2. The husband filed HMOP.No.31 of 2016 seeking divorce on the ground of adultery and cruelty. Pending the said application, the wife filed MC.No.4 of 2016 seeking maintenance. However, she remained exparte and exparte decree for divorce came to be passed on 10.08.2017 for not filing counter.

3. Thereafter, the petitioner/ wife filed instant application seeking condonation of delay of 198 days in filing the application to set aside the exparte decree for divorce claiming that she was suffering from jaundice.

4. This was resisted by the husband contending that after the exparte decree and after waiting for considerable time, he is married again and he has got a child through the said marriage. It is also contended that the petitioner/ wife had prosecuted the maintenance case in M.C.No.4 of 2016



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during that period and the claim that she was affected by jaundice is false.

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5. Even during the pendency of the application to condone the delay in setting aside the exparte decree for divorce, the wife, suppressing the exparte decree for divorce filed an Original Petition under Section 9 of the Hindu Marriage Act in HMOP.No.82 of 2018 on the file of the sub-Court, Thiruvarur on 10.07.2018 and obtained the exparte decree for restitution of conjugal rights on 07.11.2019.

6. The learned Subordinate Judge took note of the conduct of the wife and found that the explanation offered by her is false. The learned subordinate Judge also found that the delay of 198 days has not been properly explained and suspected the *bona fides* of the wife, who filed the Original Petition for restitution of conjugal rights, even during the pendency of application to condone the delay in seeking to set aside the exparte decree for divorce. On the above conclusion, the learned trial Judge dismissed the application.



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7. I do not find any illegality or material irregularity in the order of the learned trial Judge. I do not see any merits to interfere with the order of the learned trial Judge. The Revision therefore fails and it is accordingly **dismissed**. No costs.

**23.11.2021**

dsa

Index : No

Internet : Yes

Speaking order

To

The Subordinate Judge, Mannarkudi.



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**R.SUBRAMANIAN, J.**

dsa

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**23.11.2021**