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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.08.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.1043 OF 2019

AND

CRL.M.P.NOS.14278 & 14854 OF 2019

S.Mohan Babu,
S/o, Sudharsanam Naidu

... Petitioner

Versus

U.Dhivya,
D/o, K.Udayakumar

... Respondent

PRAYER:

Criminal Revision Petition filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the Fair and Decree dated 17.07.2019 passed in M.P.No.238 of 2018 in M.P.No.762 of 2017 in M.C.No.561 of 2014 by the VI Additional Family Court at Chennai, allow the Criminal Revision Petition.

For Petitioner : Mr.A.Ramesh
for Mr.R.Sankarasubbu

For Respondent : No appearance

ORDER

This Criminal Revision Petition has been filed to set aside the order dated 17.07.2019 passed in M.P.No.238 of 2018 in M.P.No.762 of 2017 in M.C.No.561 of 2014 on the file of the VI Additional Family Court at Chennai.

2. The petitioner is the husband and the respondent is the wife. Respondent wife filed a case against the petitioner husband, for maintenance in M.C.No.561 of 2014 before the III Additional Family Court, Chennai. Though notice served, the petitioner husband did not appear, hence exparte order was passed in M.C.No.561 of 2014 and ordered sum of Rs.10,000/- as maintenance. Subsequently, the petitioner husband filed the miscellaneous petition before the Family Court against the



exparte order. Since there was a delay, he has filed the petition in M.P.No.238 of 2018 to condone the delay of 708 days in filing the petition to set aside the order. The said petition was dismissed by the VI Additional Family Court, Chennai. Challenging the said order, the petitioner husband filed the present revision before this Court.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the records.

4. Though notice served to the petitioner, he did not appear to contest the case on the petition filed by the respondent/wife in M.C.No.561 of 2014. Hence, the III Additional Family Judge, Chennai passed an exparte order on 02.03.2016 and ordered Rs.10,000/- as maintenance. Main reason stated by the Family Court is that the trial proceeding in H.M.O.P.No. 2402 of 2014 was also pending before the III Additional Family Court, Chennai and in that proceeding, the petitioner actively participated, whereas, he has not appeared in the Maintenance Case to defend his case. However, the relationship between the parties are not in dispute. Considering the same, the family Judge passed the exparte order. Since the reasons stated in the affidavit for condonation of delay was not satisfied with the VI Additional Family Court, Chennai M.P.No.238 of 2018 filed by the petitioner to condone the delay of 708 days in filing the petition to set aside the exparte order was dismissed.

5. It is a well settled proposition of law, condonation of delay is purely discretionary power of the court and when the reason is not satisfied, the court need not condone the delay. Since the reason stated in the affidavit filed by the petitioner was not satisfied, M.P.No.238 of 2018 was dismissed by the VI Additional Family Court, Chennai. Therefore, this Court finds that there is no arbitrariness or malafidness is found in the order and there is no perversity in the order passed by the family court. Therefore, there is no merit in the revision and the same is liable to be dismissed. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mfa



To

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The VI Additional Judge,
Family Court,
Chennai.

CRL.R.C.No.1043 of 2019
and
Crl.M.P.Nos.14278 & 14854 of 2019

SS (CO)
PM/22/09/2021