



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)No.1085 of 2019

and

C.M.P(MD).No.5904 of 2019

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N.Nithya

... Petitioner/Petitioner/Respondent

vs.

Karmegam

... Respondent/ Respondent/Petitioner

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 25.04.2019 passed in I.A.No.38 of 2018 in H.M.O.P.No.108 of 2012 on the file of the Subordinate Judge, Veda sandur, by allowing this Civil Revision Petition.

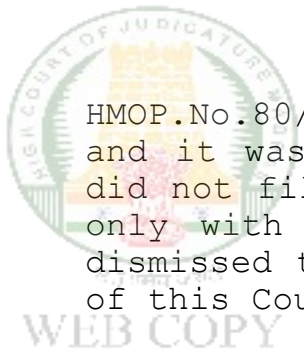
For Petitioner : Mrs.Chamundi Bose
For Respondent : Mr.M.Gnanagurunathan

ORDER

The above revision petition has been filed against the dismissal of the petition filed in I.A.No.38 of 2018 in HMOP.No.108 of 2012 to condone the delay of 1923 days in filing the petition to set aside the exparte order passed on 28.02.2013.

2.The learned counsel for the petitioner would contend that the respondent/husband filed HMOP.No.108/2012 seeking restitution of conjugal rights which was allowed exparte on 28.02.2013 and to set aside the exparte order, the revision petitioner/wife filed I.A.No.38/2018 to condone the delay of 1923 days in filing the petition to set aside exparte order stating that she was suffering from jaundice and was taking native treatment in her home and therefore, she could not contact the advocate and due to her inability to engage the advocate, she approached the legal services committee and through the legal aid counsel, she filed the above condone delay petition, but the learned Judge erroneously dismissed the condone delay petition. Hence, this petition.

3.The learned counsel for the respondent would state that the above exparte order was brought to the knowledge of the petitioner/wife on 03.05.2014 itself in the presence of village panchayatars and thereafter, the petitioner/wife filed a false police complaint on 05.05.2014 and was living separately and the respondent sent a legal notice dated 08.05.2014 for which, the petitioner did not reply to the same and hence, the respondent filed



HMOP.No.80/2018 for divorce before the Family Court, Trichirappalli, and it was decreed on 01.09.2018 after contest and the petitioner did not file any appeal thereagainst and filed the present petition only with mala fide intention and the learned Judge has rightly dismissed the same which does not require interference at the hands of this Court.

4.Heard the learned counsel for the petitioner as well as the respondent.

5.Perusal of record shows that the respondent/husband has filed HMOP.No.108/2012 against the petitioner for restitution of conjugal rights and on 28.02.2013, exparte order came to be passed. Admittedly, the petitioner is aware of the exparte order as early as on 03.05.2014 itself. Even on 05.05.2014, she had lodged a complaint against the respondent and had been living separately. Admittedly, legal notice has been sent by the respondent on 08.05.2014, for which, the petitioner has also not replied and therefore, the respondent has filed a petition for divorce in HMOP.No.80/2018 and after contest, on 01.09.2018, divorce was granted to the respondent. Now the petitioner has filed the present petition to condone the delay of 1923 days in filing the petition to set aside the exparte order passed in the petition for restitution of conjugal rights, stating that due to financial crisis and due to jaundice, she was not able to file the petition to set aside the exparte order in time and therefore, she filed a petition with the delay of 1923 days which was dismissed by the Court below stating that the petitioner has participated in the divorce proceedings and only after contest, divorce has been granted to the respondent/husband and though it is stated that an appeal has been filed against the order granting divorce, the learned Judge stating that there are no particulars produced before the Court and also not satisfying with the reasons stated by the petitioner for the inordinate delay of 1923 days in filing the petition to set aside the exparte order of granting order of restitution of conjugal rights, has dismissed the above condone delay petition, where I do not find any infirmity.

6.Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

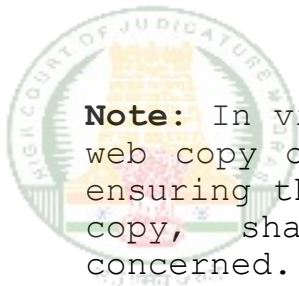
Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

1. The Subordinate Judge
Vedasandur.
2. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.GNANAGURUNATHAN, Advocate (SR-712[F]dated
08/01/2021)

ORDER MADE IN
C.R.P (MD)No.1085 of 2019
DATED : 08.01.2021

VB (23.02.2021) 3P 5C