



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (NPD) (MD) No.1373 of 2021

WEB COPY

A.Arul Gnana Vidhya

... Appellant/ Petitioner/
Petitioner

Vs.

Jacob Savari Nayagam

... Respondent/Respondent/
Respondent

PRAYER:- Civil Revision Petition filed under Article Section 115 of CPC, to call for the records pertinent to the order passed by the learned Family Court Judge, Dindigul in I.A.No.242 of 2020 in I.D.O.P.No.32 of 2017 dated 10.05.2021 and set aside the same and consequently condone the delay of 549 days in filing restoration application before the above said learned Family Court Judge, Dindigul in I.D.O.P.No.32 of 2017.

For Petitioner : Mr.S.Balaji

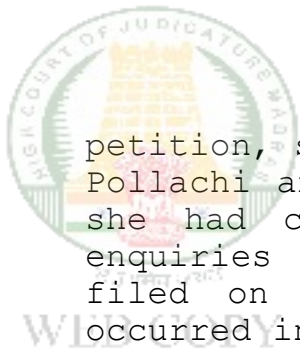
For Respondent : No appearance

ORDER

The petitioner in IDOP No.32 of 2017 is the petitioner before this Court challenging the dismissal of her application to condone the delay of 549 days in filing an application to set aside the order dismissing the I.D.O.P.No.32 of 2017 for default.

2.The brief facts are as follows:-

(i)The petitioner herein had filed I.D.O.P.N0.32 of 2017 against the respondent for dissolution of their marriage, dated 06.12.2015. The respondent herein had entered appearance and had filed his counter to the same. The petition appears to have been dismissed for default, by order of the Family Court, dated 13.04.2019 as the petitioner had not appeared in person, since the case was already posted for enquiry. In fact, the learned Judge had observed that the notice issued to the petitioner had been returned as 'unclaimed'. The petitioner came forward with the impugned application and in the affidavit filed in support of the said



petition, she would submit that she had been working as a Teacher at Pollachi and it was her counsel, who was following up her case and she had come to know about the dismissal only, when she made enquiries with her counsel. The application for restoration was filed on 01.12.2020 and therefore, the delay of 549 days had occurred in the ensuing period.

(ii)The respondent/ husband had filed his counter *inter alia* contending that the petition was dismissed even before the lock-down and therefore, the contention that the lock-down had prevented the petitioner from following up the case, was absolutely false. He had also taken a defence that the Family Court, Dindigul, did not have jurisdiction, since the marriage between the parties was celebrated at Keeranur in Pudukottai District and both of them last resided together only at Keeranur, Pudukottai District. The learned Family Judge, Dindigul, dismissed the said petition only on the ground that the Family Court at Dindigul did not have the jurisdiction over the subject matter of the divorce petition. Challenging the said order, the petitioner is before this Court.

3.The respondent, though served, has not entered appearance. Heard the learned counsel appearing for the petitioner and perused the records.

4.A perusal of the record would show that the Court below has not dismissed the petition on merits, but has dismissed only on the ground that the Court had no jurisdiction to hear the divorce petition. The application before the Court is one for setting aside an order of dismissal passed by the Family Court, Dindigul. It is only the Court which has passed the order, that can recall its order. That apart Section 3(3) of the Indian Divorce Act interprets the District Court as follows:-

"(3) District Court- "District Court" means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, [or of whose jurisdiction under this Act the marriage was solemnized or], the husband and wife, reside or last resided together"

5.A perusal of the provision of the above Section would indicate that the Family Court at Dindigul does have the jurisdiction, since the petitioner is residing within the jurisdiction of the said Court. In these circumstances, the order dated 10.05.2021 passed in I.A.No242 of 2020 of the Family Court, Dindigul, is set aside and the application is remitted back to the learned Judge, Family Court, Dindigul, to consider the application on merits. The learned Judge, Family Court, Dindigul, shall dispose of I.A.No.242 of 2020 within a period of two months from the date of receipt of a copy of this order.



6. In the result, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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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.

To:-

The Judge,
Family Court,
Dindigul.

C.R.P(MD)No.1373 of 2021
23.11.2021

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