



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.06.2021

PRONOUNCED ON : 02.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(MD)No.430 of 2014

MP(MD).No.1 of 2014

(Through Video Conferencing)

WEB COPY

Karthikeyan

...Petitioner/Respondent/Petitioner

Vs

Varalakshmi

...Respondent/Petitioner/Respondent

Prayer:- This Civil Revision Petition has been filed, against the ex-order and fair order dated, 28.01.2014, made in IA.No.10 of 2013 in HMOP.No.46 of 2011, by the Sub Court, Uthamapalayam.

For Petitioner : Mr.R.Suriya Narayanan

For Respondent : Mr.C.M.Arumugam

ORDER

- 1.This Civil Revision Petition has been filed, against the ex-order and fair order dated, 28.01.2014, made in IA.No.10 of 2013 in HMOP.No.46 of 2011, by the Sub Court, Uthamapalayam.
- 2.The facts of the case are that the husband is the Petitioner and the wife is the Respondent. The HMOP was filed by the Petitioner for divorce. An exparte decree was made on 25.08.2011. The wife had filed the above application, to condone the delay of 346 days in filing the application to set aside the exparte decree and it was resisted by way of counter. Since the said application was allowed, by the impugned order, this Criminal Revision Petition has been filed.
- 3.The learned counsel for the Petitioner has submitted that the Respondent wantonly remained exparte before the court below and that when the parties had voluntarily entered into a divorce deed, dated 7.2.2011, the impugned order, setting aside the exparte order, is not sustainable, that too when there was no satisfactory explanation given by the Respondent for each and every day, by producing valid materials.
- 4.The learned counsel for the Respondent has submitted that non-appearance of the Respondent on the date of passing of the exparte decree and the delay were properly explained and accepting the



same, the court below, in order to meet the ends of justice, had rightly allowed the application, by the impugned order.

5.This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.

6.The reason assigned by the Respondent for condoning the delay in filing the application to set aside the exparte decree is that her mother was unwell, bedridden and taking treatment for nearly about 10 months and hence, she could not appear on the date when the exparte decree was passed and also file the application in time. To substantiate the same, she has deposed in her cross examination to that effect. The said reason was denied by the Petitioner as false. However, the court below, in order to give an opportunity to the Respondent to put forth her case and in the interest of justice, accepting the said reason, had allowed the application by the impugned order, which appears to be just and proper.

7.Considering the overall facts and circumstances of the case, this Court is also of the view that it would be appropriate, in the interest of justice, to have the matter decided on merits, after affording opportunity to both parties and after a full-fledged trial, by allowing the parties to let in evidence both oral and documentary. Accordingly, in the interest of justice and in order to give one more opportunity to the Respondent to put forth her case, the impugned order is to be upheld, however, on payment of cost, considering the period of delay.

8.In fine, this Civil Revision Petition is dismissed. The impugned order dated, dated, 28.01.2014, made in IA.No.10 of 2013 in HMOP.No.46 of 2011, by the Sub Court, Uthamapalayam, is upheld, on payment of cost of Rs.5,000/- (Rupees five thousand only) to the Petitioner, within two weeks from the date of receipt of a copy of this order. Since the HMOP is of the year 2011, the Trial Court is directed to dispose of the same, on merits and in accordance with law, within six months thereafter. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2021

Sub Assistant Registrar(CS)

Srcm



To
1.The Sub Judge, Uthamapalayam

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-21017[F] dated 02/07/2021)

Order in
CRP (MD) No.430 of 2014
02.07.2021

KMK (CO)
TR (09.07.2021) 3P 3C