



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 21.04.2021

Delivered On : 26.04.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD) (NPD) No. 2448 of 2015

and

M.P. (MD) No. 1 of 2015

Chitra .. Petitioner/Petitioner/Respondent

Vs.

Murugadoss .. Respondent/Respondent/Petitioner

Prayer: This Civil revision petition is filed under Section 115 of C.P.C., to call for the records and to set aside the dismissal order passed in I.A.No.6 of 2014 in H.M.O.P.No.338 of 2010 dated 24.06.2015 on the file of the Family Court, Dindigul.

For Petitioner : Mr.D.Selvaraj
For Respondent : Mr.S.Balamurugan

ORDER

This Civil Revision Petition has been filed against the order passed in I.A.No.6 of 2014 in H.M.O.P.No.338 of 2010 dated 24.06.2015 on the file of the Family Court, Dindigul.

2.The petitioner herein is the wife and the respondent herein is the husband. The respondent/husband has filed a petition for divorce in H.M.O.P.No.338 of 2010 before the Family Court, Dindigul. He obtained an exparte order on 24.01.2012. The petitioner has filed a petition in I.A.No.6 of 2014, to condone the delay of 296 days to file the petition to set aside the exparte decree.

3.The brief substance of the petition in I.A.No.6 of 2014 is as follows:

The petitioner entered her appearance in the divorce petition filed by the respondent. The case was posted for filing counter. The petitioner could not meet her counsel on that date due to illness and she was set exparte. Due to her illness, the petitioner could not file the set aside petition in time. There was a delay of 296 days and the same has to be condoned.



4.The brief substance of the counter in I.A.No.6 of 2014 is as follows:

Each day delay is not explained. No specific reason for the delay is stated by the petitioner. The date of illness and duration of illness were not specifically stated in the petition. The respondent has filed a petition in H.M.O.P.No.22 of 2007 for restoration of conjugal rights and the case was decreed on 07.09.2010. The petitioner refused live with the respondent. Therefore, the respondent filed a petition for divorce. The nature of illness and the hospital where she took treatment were not stated and prayed the petition to be dismissed.

5.After hearing both side arguments, the learned Judge, Family Court, Dindigul dismissed the petition. Against which, the petitioner preferred this Civil Revision Petition.

6.On the side of the petitioner, it is stated that the medical records of the petitioner were marked as Exs.P1 to P4 before the trial Court. The petitioner is having a girl child. The exparte order will affect the future of the female child and prayed the order to be set aside.

7.On the side of the respondent, it is stated that the medical records were of the year 2008. The order was passed only in the year 2012. The medical records are not relevant to the concern period. In the maintenance case, the contention of the petitioner is that the daughter of the petitioner suffered from jaundice. Now the petitioner is creating a new case in this petition. There is no specific reason stated in the delay excuse petition. Each day delay is not properly explained. From the year 2006, the respondent is paying maintenance to the female child and prayed the petition to be dismissed.

8.It is seen that there is a matrimonial dispute between husband and wife. The revision petitioner is the wife. The reason stated for the delay in filing the set aside petition is that the petitioner was not well. The trial Court discussed the validity of the documents, Ex.P1 to Ex.P4. It is stated that in the maintenance case before the Chief Judicial Magistrate Court, the petitioner has stated that her daughter was suffering from jaundice during that period. The relief sought for is a personal relief and the relationship of the husband and wife is at stake. Ex.P3 reveals that the petitioner has taken blood test during the relevant period. Though the reason for the delay is not specifically stated in the petition, it is seen that the petitioner is having some ailments during that period.

9.In the above circumstances, the reasons stated in the petition are satisfactory and this Civil Revision Petition is



allowed and the order passed in I.A.No.6 of 2014 in H.M.O.P.No.338 of 2010 dated 24.06.2015 on the file of the Family Court, Dindigul is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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

1.The Judge, Family Court, Dindigul.

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-17654[F] dated 27/04/2021)

+1 CC to M/s.S.BALAMURUGAN, Advocate (SR-17669[F] dated 27/04/2021)

C.R.P. (NPD) (MD)No.2448 of 2015

26.04.2021

CN(06.05.2021) 3P 4C