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C.R.P.(PD) No.1134 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (PD) No.1134 of 2019

Venkatesa Perumal

.. Petitioner

Vs.

Renuga

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A. No.18 of 2018 in I.A. No.25 of 2017 in I.A. No.38 of 2015 in H.M.O.P. No.64 of 2014 dated 09.10.2018 on the file of the Sub Court, Arni.

For Petitioner : Mr. P.Satheesh Kumar

For Respondents : Mr. A.Balamurugan

O R D E R

Aggrieved by the order passed by the learned Subordinate Judge dismissing the petition filed by the revision petitioner in I.A. No.18 of 2018 in I.A. No.25 of 2017 in I.A. No.38 of 2015 in H.M.O.P. No.64 of 2014, the above Civil Revision Petition is preferred.



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2. The petitioner is the husband. The petitioner filed a petition for divorce in H.M.O.P. No.64 of 2014, before the Sub Court, Arni. The petition was dismissed for default on 28.07.2017. Therefore, he filed an application in I.A. No.38 of 2015 to restore the proceedings. However, the restoration application was also dismissed for default and therefore, the petitioner filed a petition in I.A. No.25 of 2017 to restore I.A. No.38 of 2015. The said application was allowed on condition that the petitioner should pay a sum of Rs.1,000/- as cost to the respondent on or before 03.09.2018. Stating that the counsel appearing for the petitioner did not inform the petitioner about the direction to pay cost, the petitioner filed another application in I.A. No.18 of 2018 to grant time for the payment of cost of Rs.1,000/-. The said application was dismissed by the lower Court stating that the petition for extension of time was filed with a delay of 18 days.

3. This Court is of the view that the order of the lower Court is unsustainable. When the petitioner has given valid reasons as to how he could not pay the cost within the time granted by the lower Court, the Court does not become functus officio as it was assumed by the lower Court. In such



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circumstances, the order of the lower Court I.A. No.18 of 2018 is liable to be set aside and the same is hereby set aside.

4. Learned counsel for the petitioner has expressed his willingness to pay cost to the counsel for the respondent. Accordingly the application filed by the petitioner in I.A. No.18 of 2018 in I.A. No. 25 of 2017 in I.A. No.38 of 2015 in H.M.O.P. No.64 of 2014 is allowed on condition that the petitioner shall pay a sum of Rs.1,000/- to the respondent counsel, within a period of two days from the date of receipt of a copy of this order. This payment shall be treated as the payment that was made to the respondent as directed by the lower Court in its earlier order in I.A. No.38 of 2015.

5. As a result, this Civil Revision Petition is allowed on payment of cost indicated above.

03.01.2022

Speaking order / Non-speaking order

Index: Yes / No

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S.S.SUNDAR, J.,

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To

The Subordinate Judge, Arni.

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