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C.R.P. (PD) No.2102 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. No.2102 of 2019
and
C.M.P.No.13599 of 2019

C.Vasudevan
S/o Chinnayan Naidu

... Petitioner

Vs.

V.Krishnaveni
W/o Vasudevan

... Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.12.2018 made in I.A.No.265 of 2018 in H.M.O.P. No.53 of 2004 on the file of the Family Court, Namakkal.

For Petitioner : Mr.S.Kalyanaraman

For Respondent : No appearance

ORDER



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This Civil Revision Petition has been filed, challenging the order dated 13.12.2018 in I.A.No.265 of 2018 in H.M.O.P.No.53 of 2004 on the file of the Family Court, Namakkal.

2. The petitioner/husband has filed the H.M.O.P. No.53 of 2004 for dissolving the marriage, held between himself and the respondent. During the pendency of the above said petition, the respondent/wife was set exparte on 07.04.2014, before the Trial Court for non-appearance. Hence, the respondent/wife has filed an application in I.A.No.265 of 2018, to condone the delay of 900 days in setting aside the exparte decree. The learned Judge, allowed the said I.A.No.265 of 2018 on 13.12.2018 with cost. Aggrieved by the order allowing the delay petition, the present revision petition has been filed by the petitioner/husband.

3.The learned counsel for the petitioner/husband would state that the learned Judge erred in allowing the petition when no satisfactory



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explanation has been given for the huge delay in filing the petition to set aside the ex-parte decree in H.M.O.P.No.53 of 2004.

4. Heard the learned counsel for the revision petitioner. There is no representation on the side of the respondent/wife.

5. It is transpired from the records that H.M.O.P.No.53 of 2004 has been filed by the petitioner/husband, for divorce. Due to the non-appearance of the respondent/wife, she was set exparte and divorce decree was passed on 07.04.2014. Aggrieved by the same, the respondent/wife has filed an application in I.A.No.265 of 2018 with a delay of 900 days and the same was allowed by the learned Judge, with cost.

6. It is noticed that, even before the Family Court, the counsel for respondent/wife reported “no instructions”. Even before the exparte decree, the respondent absented herself on several occasions and did not cross-examine the petitioner. The respondent/wife was well aware



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of the HMOP proceedings and her counsel also filed counter, when such being the position, the grounds raised by the respondent/wife to set aside the exparte decree on health issues from the year 2009 to 2017 cannot be accepted. The explanation for the huge delay on account of treatment for illness is not satisfactory. In such view of the matter, the order allowing the I.A.265 of 2018 condoning the delay cannot be said to be correct.

7. The H.M.O.P., is of the year 2004. Since the respondent/wife was called absent for the continuous hearings, the matter was posted finally on 02.07.2013 and even on that day, there was no representation for the respondent/wife, therefore, she was set exparte and on 03.04.2014, the matter was finally heard and on 07.04.2014, decree of divorce was ordered.

8. This Civil Revision Petition is of the year 2019. Before this court also, there is no representation for the respondent in the earlier hearing dates as well as today. When the matter was taken up for



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admission, this court ordered notice to the respondent and granted interim stay. The undisputable fact is that the delay is very huge in filing the petition to set aside the exparte decree of divorce. No proper reason has been assigned by the respondent/wife for condoning such huge delay. Therefore, in the considered opinion of this court, the said IA has been filed only to drag on the proceedings and as such, the learned Judge ought not to have condoned the delay. In such view of the matter, this court is constrained to allow the present revision petition.

9. In the light of the above reasonings, this Civil Revision Petition stands allowed. The order dated 13.12.2018 passed in I.A.No.265 of 2018 stands set aside. Section 5 application seeking to condone the delay of 900 days is rejected. No costs. Consequently, connected miscellaneous petition is closed.

11.08.2022

Index : Yes/No



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Speaking order/Non-speaking order
Jer/nvsri

J.NISHA BANU, J.

Jer/nvsri

To

- 1.TheJudge, Family Court, Namakkal.
- 2.The Section Officer, V.R.Section
High Court of Madras.

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