



C.R.P.(NPD)No. 1239 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 23.08.2022

Delivered On: 22.09.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.(NPD)No.1239 of 2021

K.Sarika

... Petitioner/Petitioner/Respondent

Vs.

D.Premkumar

... Respondent/Respondent/Petitioner

PRAYER: Criminal Revision Petition had been filed under Section 115 of the Code of Civil Procedure, seeking to set aside the judgment and decree passed in I.A.No.1 of 2019 in O.P.No.791 of 2019 dated 09.03.2021 on the file of the learned VI Additional Family Court, Chennai by allowing present Civil Revision Petition.

For Petitioners : Mr.D.Padmanabhan

For Respondent : Mr.L.Sriram
for M/s.Chennai Law Firm



C.R.P.(NPD)No. 1239 of 2021

ORDER

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This Criminal Revision Petition had been filed seeking to set aside the fair order and decretal order passed in I.A.No.1 of 2019 in O.P.No.791 of 2019, dated 09.03.2021 on the file of the learned VI Additional Family Court, Chennai

2.The learned Counsel for the Petitioner submitted his arguments. As per the submission of the learned Counsel for the Petitioner, the Petitioner is the wife. The Respondent is the husband. The Respondent/husband is employed in Coimbatore and his sister is a Woman Constable in Tamil Nadu Police working in Chennai. The Respondent/Husband, who is employed in Coimbatore and residing at Coimbatore, had filed F.C.O.P.No.791 of 2019 on the file of the learned VI Additional Family Court at Chennai seeking divorce. The native address of the Respondent/Husband is Theni whereas he is employed in Coimbatore. The marriage between the Petitioner and the Respondent took place on 15.11.2015 at Arulmighu Meenakshi Sundareswarar Temple, Aandipatti in Theni District in the presence of elders of both the family. After the marriage, both the Petitioner and Respondent



C.R.P.(NPD)No. 1239 of 2021

lived together as Husband and Wife at Coimbatore. In F.C.O.P.No.791 of 2019 the address of the Wife was shown as Theni. The notice returned unserved as “No Such Person” and obtained *ex parte* order. The Respondent/Husband is none other than the paternal aunts son. Out of wedlock, a male child was born. In the course of matrimonial life at Coimbatore, due to the evil advice of the Respondent’s mother and sister, the Respondent deserted the Petitioner without any valid reason. The Petitioner lodged a complaint before the All Women Police Station, Aandipatti. Based on the complaint, CSR No.329 of 2018 was issued. The Police conducted enquiry and advised the Respondent to join the Petitioner and lead a peaceful life. Instead, due to his arrogance, the Respondent was not ready to live with the Petitioner. With the inducement of the Sister of the Respondent who is serving as Woman Constable in Chennai and showing her Police Quarters’ address in order to escape from the clutches of law and to make the Petitioner to run from pillar to post, the Respondent filed a Petition in F.C.O.P.No.791 of 2019 on the file of the learned VI Additional Family Court, Chennai. This Petition was filed without jurisdiction. After receipt of summons, the Petitioner called the Respondent through phone and the Respondent stated



C.R.P.(NPD)No. 1239 of 2021

that he had filed Petition only to satisfy his family and he will withdraw the F.C.O.P. in the next hearing and he will rejoin the Petitioner. Believing the words of the Respondent, the Petitioner did not appear before the learned VI Additional Family Court at Chennai. The learned VI Additional Family Court set the Petitioner herein as Respondent in the F.C.O.P.No.791 of 2019 *ex parte* and *ex parte* order was passed on 05.08.2019. The Respondent in this Revision Petition/Husband had achieved his goal by misleading the Court without any jurisdiction and not having any cause of action within the jurisdiction of the learned VI Additional Family Judge at Chennai. The wife filed Petition in I.A.No.1 of 2019 in F.C.O.P.No.719 of 2019 to set aside the *ex parte* order along with the Petition to condone the delay of 66 days in filing a petition to set aside the *ex parte* order. The said Petition filed by the Petitioner/Wife was dismissed by the learned VI Additional Principal Judge, VI Additional Family Court, Chennai. Therefore, the Petitioner/Wife had approached this Court by filing this Civil Revision Petition under Section 115 of the Code of Civil Procedure.

3.The learned Counsel for the Respondent submitted that the date of



C.R.P.(NPD)No. 1239 of 2021

marriage is 15.11.2015. There was judicial separation from 16.06.2018.

After judicial separation, the Respondent is living in Chennai after securing a job in Chennai. The Petitioner was set *ex parte* on 05.08.2019. The *ex parte* decree passed on 05.08.2019. The reasons stated by the Petitioner for the delay of 66 days in not filing the Petition to set aside the *ex parte* order had not been explained properly. The Respondent sent message to the Petitioner/Wife to withdraw the maintenance case.

4.The learned Counsel for the Petitioner by way of rejoinder had invited the attention of this Court to the cause of action paragraph at page 11 of the typed set of papers wherein it is stated as under:

“25.The cause of action for filing this Petition arose at Aandipatti on 15.11.2015 at Arulmigu Meenakshi Sundreswarar Temple, Aandipatti, Theni District, where the marriage between the Petitioner and Respondent has been taken place and E-51, Kilpauk Police Quarters, Lutheral Garden Kilpauk, Kilpauk, Chennai – 600 010 where the spouse were lived together till their separation and on 16.06.2018 when the respondent had left the matrimonial home are within the Jurisdiction of this Hon'ble Court.”

It is nothing but suppression of fact and misleading the Court that the



C.R.P.(NPD)No. 1239 of 2021

Petitioner and the Respondent as wife and husband resided at Kilpauk Police Quarters. The Aadhar card and ration card of the Respondent/Husband were not produced as document before the learned VI Additional Family Court at Chennai. Also, it is to be noted that the Petitioner/Wife had filed maintenance case before the learned Judicial Magistrate at Theni where the Respondent herein in this Revision Petition and the Petitioner in F.C.O.P.No.791 of 2019 had appeared before the learned Judicial Magistrate, Theni. The said conduct of the Respondent/Husband, who is employed at Coimbatore and who had been appearing before the learned Judicial Magistrate Court at Theni in the case filed by the wife seeking maintenance for her and her minor child aged about two years, in choosing the Court at Chennai with false averments, misleading the Court, obtaining a decree behind the back of the Petitioner/Wife is nothing but mischief played upon the Court and fraud played upon the Court and the Revision Petitioner herein. Therefore, in the interest of justice, the Petition filed by the wife in setting the *ex parte* order with a delay of 66 days is to be condoned. The Petitioner/Wife had already stated the reason that there is no one to take care of the two years old male child, who was ill and she was unable to travel all



C.R.P.(NPD)No. 1239 of 2021

the way to Madras. Also, the Petitioner had on mobile phone contacted the Respondent/Husband who had prevailed upon her that he will withdraw the F.C.O.P.No.791 of 2019 as he had filed that Petition only to satisfy his sister and mother. These things can be brought to light only when the condone delay petition is allowed.

5.On consideration of the rival submission, the conduct of the Respondent/Husband, who is aware of the financial status of the wife, is not good. As per the guidelines of the Hon'ble Supreme Court regarding matrimonial dispute that while choosing the Court the place of residence of the wife shall be the prime consideration before the Court concerned had been ignored in this case. As rightly pointed out by the learned Counsel for the Petitioner, the cause of action is disputed by the wife as she had never cohabited with the Respondent in the Police Quarters of her sister-in-law who is employed as Women Constable in Chennai.

6.From the normal human conduct, it can be considered that the wife



C.R.P.(NPD)No. 1239 of 2021

will not be staying in the house of the sister-in-law. The conduct of the Respondent/Husband showing the address of his sister as though he was living as husband and wife with the Petitioner in the police quarters is nothing but mischievous only. He had chosen the Family Court at Chennai fully knowing well that the cause of action had not arisen at Chennai. If his *bona fides* were true, he could have filed Petitioner either at Family Court or Sub Court at Theni or Family Court at Coimbatore. In the facts and circumstances of the case, particularly, when the Petitioner/Wife is with his two years old child, who is not keeping good health and no other person to look after the child and also the facts and circumstances mentioned in the affidavit that the affidavit filed in the Petition to condone the delay wherein the Respondent/Husband had made her to believe that he will withdraw the case as he had filed the case in F.C.O.P.No.791 of 2019 on the file of the learned VI Additional Family Court, Chennai, only to satisfy his mother and sister. The conduct of the Respondent/Husband in filing the Petition with his sister's address is only as an evil motive that the wife will not come all the way to Chennai to contest the case. There is no chance for the wife to stay with the sister-in-law when there is dispute between the husband and wife. Under any



C.R.P.(NPD)No. 1239 of 2021

circumstances, the Respondent/Husband cannot have filed a Petition in Chennai. It is nothing but Forum Shopping, by the Respondent/Husband.

The learned Judge had ignored the guidelines given by the Hon'ble Supreme Court regarding matrimonial dispute and has rejected the explanation offered by the Petitioner/Wife in seeking condonation of delay in filing a petition to set aside the *ex parte* order. Also, as rightly stated by the learned Counsel for the Petitioner that in the reported ruling in ***N.Balakrishnan -vs- M.Krishnamurthy*** reported in **1998 (7) SCC 123** the refusal to condone delay would result in foreclosing a suitor from putting forth his cause. The sufficient cause under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. Therefore, the dismissal of the Petition to condone the delay of 66 days in filing the set aside the *ex parte* order by the learned VI Additional Judge, Family Court, Chennai, is found unreasonable and unacceptable. In the facts and circumstances of the case, the Petitioner/Wife is the victim of the evil design of the Respondent/Husband.



C.R.P.(NPD)No. 1239 of 2021

WEB COPY In the result, **this Civil Revision Petition is allowed.**

The order dated 09.03.2021 passed in I.A.No.1 of 2019 in F.C.O.P.No.791 of 2019 is set aside. The learned VI Additional Principal Judge, Family Court, Chennai is directed to proceed further to enable the Petitioner/Wife to participate in the proceedings and to dispose of the case as per law. No costs.

22.09.2022

SRM

Index : Yes / No

Internet : Yes / No



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C.R.P.(NPD)No. 1239 of 2021

To

The VI Additional Family Court,
Chennai.



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C.R.P.(NPD)No. 1239 of 2021

SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
C.R.P.(NPD)No.1239 of 2021**

22.09.2022



C.R.P.(NPD)No. 1239 of 2021

C.R.P.(NPD)No.1239 of 2021

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SATHI KUMAR SUKUMARA KURUP, J.

This Civil Revision Petition is listed under the caption "for being mentioned" at the instance of the learned Counsel for the Petitioner.

2.It is to be noted that in the order, dated 22.09.2022, in C.R.P.(NPD)No.1239 of 2021, in the prayer portion as well as in the first paragraph, instead of Civil Revision Petition, it had been mentioned as Criminal Revision Petition, inadvertently.

3.Registry is directed to carry out necessary corrections accordingly, and issue fresh order copy to both the parties.

25.11.2022

cmr



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C.R.P.(NPD)No. 1239 of 2021

SATHI KUMAR SUKUMARA KURUP, J.

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C.R.P.(NPD)No.1239 of 2021

25.11.2022