



C.R.P.No.2590 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.2590 of 2017
and
C.M.P.No. 12343 of 2017

N.K.Latha
D/o. N.Kandasamy

... Petitioner

Vs.

S.Diwakar,
S/o. M.Subramanian

... Respondent

PRAYER: Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the docket order passed in I.A.No.903 of 2016 in I.A.No.1807 of 2014 in I.A.No.813 & 812 of 2014 in O.P.No.601 of 2007 on the file of II Addl. Family Court, Chennai.

For Petitioner : Mr.Sudharshana Sunder

For Respondent : Mr.S.Diwakar (party-in-person)



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ORDER

The revision petitioner herein, being wife of respondent, preferred this Civil Revision Petition challenging the order passed in I.A.No. 903 of 2016. She filed a petition in O.P.No.601 of 2007 before the II Addl. Family Court, Chennai praying for a divorce against the respondent husband. The respondent also contested the case denying the allegations levelled against him.

2. Before the trial court, both parties adduced evidence and P.W.1 was examined and thereafter, during the part-heard stage, the petitioner not appeared for very many times and subsequently, the O.P. was dismissed for default on 06.12.2013. Subsequent to that, she filed two applications in I.A.No.812 and 813 of 2014 to condone the delay as well as to restore O.P. Both the applications were strongly opposed by the respondent, however, the petitioner not appeared in person. The trial



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judge in order to give one more opportunity to the Revision Petitioner, allowed both the applications. Challenging the said findings, the respondent husband filed an application in I.A.No.903 of 2016 before the trial court with the following prayer :-

“For the reason stated in the accompany in affidavit, it is most humbly prayed before this Hon'ble Court that on considering it to pass orders in the interest of justice granting a stay on the operation of the order dated 27.1.16 passed in I.A. 1807/14 on the file of this Hon'ble Court in dismissed O.P. 601 of 2007 until the time limit fixed for filing a revision being an appeal in disguise before the Hon'ble High Court.”

3. The said application was challenged by the petitioner by preferring this Civil Revision Petition on the following grounds :-

“1. The learned judge ought not to have taken up on file the application and ordered notice.



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2. The learned judge failed to note that the application is not maintainable in view of the fact that the period for filing revision has already expired.

3. The learned judge ought to have returned the petition filed by the respondent regarding maintainability.

4. The learned judge ought not to have issued the notice to the petitioner herein.

5. The learned judge had erred in adjourning the matter, thereby indirectly granting the relief to the respondent, which he has not entitled to thus delaying the process of justice.

6. The learned judge failed to note that the application has been filed by the respondent only to delay the proceedings.”

4. Earlier, when the matter was posted in the list, at that time, the learned counsel for petitioner alone appeared and the respondent, who conducted the case in person not appeared. Accordingly, the C.R.P. was disposed of with a direction. Thereafter, while he verified the list, found



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that order was passed in his absence, immediately he appeared before this court and mentioned that opportunity is to be given to him. In the interest of justice, again, the matter was posted for hearing under the caption “for being mentioned”, and accordingly, on hearing both sides, the above Civil Revision Petition was reopened.

5. Today, when the matter taken up for hearing, the learned counsel for petitioner and respondent in person were present. The respondent submitted that though she preferred two applications in I.A.Nos. 812 and 813 of 2014 to condone the delay and to restore the petition O.P. No.601 of 2017 and inspite of allowing those applications, the revision petitioner/wife has not appeared before the trial court to conduct further proceedings and she left to abroad and she has not cooperated to conduct further proceedings. Accordingly, again the O.P. was dismissed for default and to restore the O.P., she filed three applications in I.A.No. 2836 to 2838 of 2018, which were also dismissed on 12.08.2021. To that effect, he filed the diary status of the case. However, the learned counsel for petitioner submitted that in order to drag on the proceedings, the



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respondent filed an application in I.A.No. 903 of 2016 without any maintainability and sought time to prefer C.R.P., but he has not preferred any revision petition. Admittedly, the respondent after allowing the applications in I.A.Nos. 812 and 813 of 2014, he preferred Transfer O.P. and the matter was also transferred from the concerned court to another court.

6. On perusal of applications filed by the petitioner, it would clearly reveals that she is not inclined to appear before the trial court. Moreover, she went abroad and she alone dragging on the proceedings. Furthermore, though the O.P. is pending from the year of 2015, she is not cooperating to conduct further proceedings before the trial court. Accordingly, it was dismissed. Thereafter, she filed three applications to restore the O.P., which were also dismissed on 12.08.2021 and on that day, in fact, the Revision Petitioner was not appeared, but the respondent husband appeared in person before the trial court. So, all these facts clearly shows that the revision petitioner is dragging on the proceedings and she is not inclined to proceed with the trial. Now, as on date, there is



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no Original Petition is pending before the trial court. Therefore, the Civil Revision Petition filed by this petitioner is not maintainable and accordingly, this Civil Revision Petition is dismissed as no merits. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

05.01.2023

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order

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To

II Addl. Judge, Family Court, Chennai.



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T.V.THAMILSELVI, J.

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