



CRP(PD)(MD)No.405 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.405 of 2021

and

CMP(MD)No.2182 of 2021

S.Lakshmanan

... Petitioner

versus

A.S.Renuga

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.10.2019 passed in I.A.No.79 of 2018 in H.M.O.P.No.5 of 2015 by the learned III Additional Subordinate Judge, Madurai.

For Petitioner : Mr.M.Venkatesan

For Respondent : Mr.S.Manohar

ORDER

This Civil Revision Petition is filed against the order dated 23.10.2019 passed in I.A.No.79 of 2018 in H.M.O.P.No.5 of 2015 by the learned III Additional Subordinate Judge, Madurai.



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WEB COPY 2. The petitioner is the husband and the respondent is the wife.

Their marriage was solemnized on 13.12.2013 as per Hindu Rites and Customs and out of the wedlock, they are blessed with a male child. Due to some misunderstanding, both are now living separately. Thereafter, the petitioner/husband has filed a divorce petition in H.M.O.P.No.5 of 2015 before the Sub Court, Madurai. Since the respondent/wife has not appeared before the trial Court, she was set *ex parte* and *ex parte* decree was passed on 12.08.2016. After knowing the same, the respondent filed an interlocutory application in I.A.No.79 of 2018 in H.M.O.P.No.5 of 2015, to condone the delay of 554 days in filing the petition to set aside the *ex parte* decree. The said application was allowed by order dated 23.10.2019. Aggrieved over the same, the petitioner/husband has filed the present Civil Revision Petition.

3. The learned counsel appearing for the petitioner submits that the respondent/wife is working as a Professor and she is residing in the address mentioned in the divorce petition. Though Court notice was



sent to the respondent in the address mentioned, she purposely evaded the summons and it was returned with an endorsement as “refused”.

Further, the documents, namely, Exs.P1 to P5 itself would reveal that the respondent is residing in the address mentioned in the H.M.O.P. Petition. However, the trial Court, without considering the same, has allowed the said interlocutory application filed to condone the delay of 554 days in setting aside the *ex parte* order.

4. The learned counsel appearing for the respondent submits that admittedly, notice has not been served on the respondent. Further, the Court notice sent to the respondent was awaited and the private notice sent by the petitioner also returned with an endorsement as “left”. While so, the trial Court has proceeded with the case and also passed an *ex parte* decree. After knowing the same, she filed the said interlocutory application to condone the delay of 554 days in filing the petition to set aside the *ex parte* decree. The trial Court, after satisfying the manner in which the petition has been disposed of, allowed the said interlocutory application. Therefore, there is no reason to interfere



with the said order.

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5. This Court considered the rival submissions made and perused the materials available on record.

6. Admittedly, in this case, notice has not been served on the respondent before the *ex parte* decree passed in H.M.O.P.No.5 of 2015. While granting a decree of divorce, the trial Court should have given an opportunity to the wife in order to have her say in the matter. Further, the trial Court should necessarily take appropriate care and caution to ensure that the wife is adequately represented. Merely holding that the notice has been refused and thereafter, proceeding with the matter and that too by granting a decree for divorce, would be unjust. It is just and proper that in the cases of dissolution of marriage, both the parties are adequately and substantially heard before passing any order on merit. In this case, the trial Court, before granting the decree of divorce, has not given any adequate opportunity to the wife and holding that the notice has been refused, granted the decree of divorce. Therefore, this



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Court is not inclined to interfere with the impugned order condoning the delay of 554 days in filing the petition to set aside the *ex parte* decree.

7. Accordingly, the Civil Revision Petition is dismissed. However, the trial Court is directed to proceed with I.A.No.79 of 2018 and decide the same within a period of eight weeks from the date of receipt of a copy of this order. The trial Court shall endeavour to conclude H.M.O.P.No.5 of 2015 as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

30.11.2022

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Index : Yes / No.

Internet : Yes / No.

To

1. The learned III Additional Subordinate Judge,
Madurai.



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B.PUGALENDHI, J.

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