



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2022

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THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.R.P. (MD)No.68 of 2019  
and C.M.P (MD) No.333 of 2019

M.Subbulakshmi

... Petitioner/Petitioner

Vs.

S.B.Sundarrjan

... Respondent/Respondent

**PRAYER:-** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 01.11.2018 made in I.A.No.591 of 2017 in H.M.O.P.No.16 of 2015 on the file of the Family Court, Tirunelveli.

For Petitioner : Mrs.M.Subbulakshmi  
Party-in-person

For Respondent : Mr.B.N.Rajamohamed

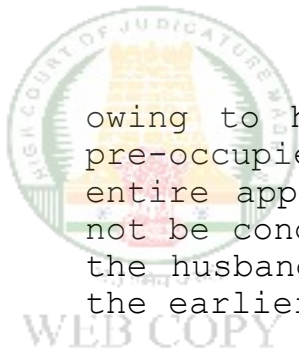
**ORDER**

This civil revision petition has been filed by the petitioner/wife and argued by her as party-in-person.

2.The brief facts of the case are as follows:

2.1.The respondent/husband had filed HMOP.No.16 of 2015 on the file o the Family Court, Tirunelveli for dissolving the marriage between him and the revision petitioner herein. The revision petitioner/respondent had not appeared before the Court, though summon was served on her address and therefore, an ex-parte decree came to be passed on 25.06.2015. On coming to know about the said order, the revision petitioner has filed an application for condoning the delay of 830 days in filing the application for setting aside the ex-parte decree. In the affidavit filed in support of the petition, she would submit that she was unable to go over to Tirunelveli, since she was working as Professor at Hosur and consequently, due to her pre-occupation relating to her work, she was unable to contact her counsel to get the details. Thereafter, when she meet her counsel, she was informed about the ex-parte order and she has taken steps to set aside the ex-parte order. However, there is a delay of 830 days.

2.2.The respondent/husband had filed a counter stating that the reasons given are totally false and that she has enough holidays



owing to her position and therefore, her contention that she was pre-occupied in work is totally false. He would submit that the entire application is only a *malafide* petition and the same should not be condoned. An additional counter statement was also filed by the husband, more or less, adopting the very same statement made in the earlier counter.

2.3.The learned Family Judge, Tirunelveli by order dated 01.11.2018 dismissed the said application. The learned Judge had practically adopted the defence raised in the counter by the respondent/husband and held that the petitioner's claim that she was pre-occupied in her work is totally wrong, since she has 73 days holidays and that she had not given any details as to the date on which she had come to know about the ex-parte decree and that the date on which she had taken steps to file the application for condoning the delay. Challenging this order, the revision petitioner has filed this civil revision petition. Initially, she was represented by a counsel and thereafter, she has appeared as party-in-person.

3.Heard the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

4.The ex-parte order dated 25.06.2015 would indicate that the petitioner was initially represented by counsel and thereafter, there has been an affixure in her address. The reason as to why an affixure was ordered is not discernible from the ex-parte judgment. Even in the judgment, it has been clearly stated that service was not possible on the petitioner, because she was not in the residence and it was informed that she was out of station. Despite this, the Court has not directed fresh notice to the correct address. From a reading of the counter filed to the impugned petition, the husband seems to be aware about his wife's work and the number of holidays that is available to her which only goes to show that the husband is keeping track of the wife. Therefore, for this reason, he has not taken steps to serve at her address where she was residing/working.

5.Be that as it may, considering the fact that the revision petitioner herein is the wife and decree is one for dissolving the marriage, an opportunity should be given to the wife, who has given some reasons for the delay in taking out an application to set aside the ex-parte decree. Therefore, this Court is of the view that the delay has to be condoned and the ex-parte order dated 25.06.2015 has to be set aside. Accordingly, this civil revision petition is allowed and the order in IA.No.591 of 2017 is set aside and the decree in HMOP.No.16 of 2015 is also consequently, set aside. HMOP is of the year 2015 and therefore, the revision petitioner/wife shall file her counter statement in HMOP.No.16 of 2015 within 15 days from the date of receipt of a copy of this order into the Court and she shall not wait for the date of the hearing but, shall file



Judge, Tirunelveli shall dispose of the HMOP within three months, thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Family Court,  
Tirunelveli.

C.R.P. (MD) No.68 of 2019  
31.01.2022

RD(17.02.2022) 3P 2C