



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :27.01.2022

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THE HONOURABLE MS.JUSTICE P.T.ASHA

CRP(MD)Nos.2035 of 2019 & 975 of 2021

CRP(MD)No.2035 of 2019

C.Balasubramanian

... Petitioner

Vs.

P.Amutha

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order of the learned Additional Subordinate Judge, Karur in I.A.No.58 of 2017 in HMOP.No.250 of 2012 dated 03.08.2019 and allow the same.

CRP(MD)No.975 of 2021

C.Balasubramanian

... Petitioner

Vs.

1.P.Amutha

2.Minor Atchuthan

represented by her mother and guardian  
the first respondent.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C, to set aside the order of the learned Additional Subordinate Judge, Karur in I.A.No.725 of 2018 in O.S.No.306 of 2015 dated 03.08.2019.

In both petitions,

For Petitioner

: Mr.K.K.Senthil

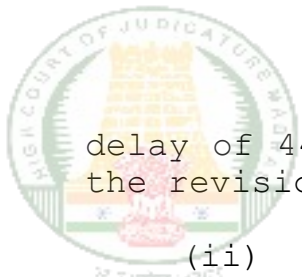
For Respondents

: Mr.S.Venkatesh,  
for Mr.K.Hariharan.

COMMON ORDER

The following civil revision petitions are filed by the husband.

(i) CRP(MD)No.2035 of 2019 is filed challenging the order passed in IA.No.58 of 2017 in HMOP.No.250 of 2012 by the Additional Subordinate Judge, Karur dismissing the petition to condone the



delay of 441 days in filing a petition to restore the HMOP filed by the revision petitioner for divorce.

(ii) CRP(MD)No.975 of 2021 is filed challenging the order passed in IA.No.725 of 2018 in OS.No.306 of 2015 by the Additional Subordinate Judge, Karur, dismissing the application for condoning the delay of 323 days in filing a petition to restore OS.No.306 of 2015.

2. The parties are referred to as per their ranking in CRP(MD) No.975 of 2021.

3. The petitioner herein had filed HMOP.No.250 of 2012 on the file of the Subordinate Court, Karur for divorce against the first respondent / wife herein contending that his wife had refused to take care of his mother and was also abusive to her. He had further stated that his wife was in the habit of beating his mother in his absence. He had also stated that on account of the ill treatment by his wife, his mother has passed away. Two and half years back, suddenly, she had left the matrimonial home without his permission and consent, and from that day onwards, she is residing in her parental home. She had also delivered a son and had not bothered to inform the petitioner about the same. The petitioner on coming to know about the birth of the son, had gone to see his son, however, he was prevented from seeing the child. In these circumstances, he had filed the petition for divorce.

4. A detailed counter was filed refuting the allegations made therein. Thereafter, the revision petitioner allowed the HMOP to be dismissed for default on 08.06.2016. He had thereafter filed the impugned petition to condone the delay of 441 days. However, no reason, whatsoever has been given in the affidavit filed in support of the said petition.

5. Meanwhile, the petitioner after filing of the HMOP in the year 2012, had filed OS.No.306/2013 on the file of the District Munsif at Karur to declare that the second respondent is not his son and for an injunction restraining the respondents from interfering with the affairs of the revision petitioner in any manner. In this application also, the revision petitioner had reiterated the ill treatment meted out to his mother and he would also submit that originally he had thought that the second respondent was his child. But, however, he has his doubts about the same, since the marriage had taken place on 14.06.2009 and the second respondent was born on 11.03.2010.

6. The first respondent herein had filed a detailed counter refuting the wild allegations made by the revision petitioner herein. The petitioner had allowed these proceedings to also be dismissed for default. Thereafter, the revision petitioner came up



with the impugned application to condone the delay of 323 days in filing an application to restore the suit. The affidavit filed in support of the said petition would indicate that the first respondent / wife had taken out an application in Transfer OP.No.20 of 2013 to Transfer the OS.No.367/2012 from the Principal District Munsif Court to the Additional Subordinate Court for joint trial with HMOP.No.250/2012. This petition was allowed and joint trial was directed. In the affidavit filed in support of the petition to condone the delay of 323 days, the revision petitioner would submit that he was down with jaundice and was unable to travel in the month of November 2017. The first respondent / wife had filed a counter stating that since the DNA report had shown that the second respondent was born to the revision petitioner, he had not proceeded with the suit in OS.No.306/2015. Further, the petitioner had been prosecuting HMOP.No.250/2012 from 23.10.2017 onwards and therefore, the reasons given for non appearing in the suit is absolutely false.

7. The learned Judge had proceeded to dismiss both the applications. As regards IA.No.58/2017 in HMOP.NO.250/2012, the learned Judge had observed that the petitioner had not given sufficient reason for condoning the delay of 441 days. In the suit in OS.No.306/2015, the petitioner had appeared on various dates after the dismissal of HMOP.No.250/2012 for default and has been prosecuting the same. Thereafter, the petitioner again claimed lack of knowledge about the proceedings in HMOP.No.250/2012. In fact, the petitioner had prosecuted the OS.No.306/2015 till 27.04.2017, on which date, that suit was dismissed for default. Therefore, there was no valid reasons for not taking out an application to restore the HMOP earlier.

8. As regards the application in IA.No.725/2018 in OS.No.306/2015 for condoning the delay of 323 days in restoring the suit, the learned Judge had observed that after the dismissal of the suit for default, the petitioner has been prosecuting IA.No.58/2017 which was filed to condone the delay of 441 days in restoring HMOP.No.250/2012 to file. The allegation therefore, that he was suffering from jaundice on 05.10.2017 is totally false, since, the allegation that he had suffered from jaundice is only from November 2017, whereas, the suit and the HMOP were listed for joint trial on 05.10.2017. Challenging the said orders, the petitioner is before this Court.

9. Heard the learned counsel on both sides.

10. As rightly pointed out by the learned Additional Subordinate Judge, Karur, the revision petitioner had shown absolute indifference in prosecuting the proceedings. After the dismissal of HMOP.No.250/2012 for default, the petitioner was prosecuting OS.No.306/2015 and likewise after the dismissal of OS.No.306/2015, he was prosecuting the IA to condone the delay of 441 days in



restoring the HMOP.No.250/2012. This is despite the fact that there were orders for joint trial of both petitions. The first respondent / wife had also stated that the DNA test had gone against the petitioner and therefore, he was reluctant to proceed with the petition. Be that as it may, the fact that the revision petitioner was prosecuting one petition and allowing the other to go for default is deprecated and appears to be an attempt to protract the proceedings. Detailed reasons have been given by the learned Additional Subordinate Judge, Karur for dismissing the said applications. I do not find any reason to interfere with the said orders.

11. Accordingly these civil revision petitions are dismissed. No costs. The order of the learned Additional Subordinate Judge, Karur in I.A.No.58 of 2017 in HMOP.No.250 of 2012 dated 03.08.2019 and order of the learned Additional Subordinate Judge, Karur in I.A.No.725 of 2018 in O.S.No.306 of 2015 dated 03.08.2019 are confirmed.

Sd/-

Assistant Registrar(CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Additional Subordinate Court, Karur

C.R.P. (MD) Nos. 2035 of 2019 &  
975 of 2021  
27.01.2022

SP (CO)  
TR (15.02.2022) 4P 2C