



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2022

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.492 of 2017

and

C.M.P(MD)No.2321 of 2017

S.Hema

... Petitioner/
Petitioner/Respondent

Vs.

Datchinamoorthy

... Respondent/
Respondent/Petitioner

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India against the order, dated, 30.08.2016 passed in I.A.No.72 of 2016 in H.M.O.P.No.470 of 2014 on the file of the I Additional Sub Court, Melur Camp, Madurai.

For Petitioner : Mr.K.Gokul

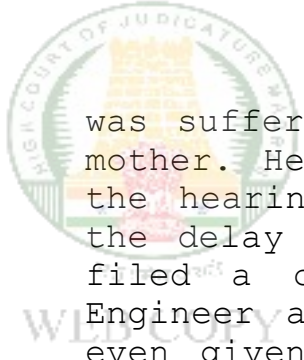
For Respondent : Mr.S.Raja Mohamed

ORDER

The respondent/wife in H.M.O.P.No.470 of 2014 is the revision petitioner.

2. The respondent in the revision petition/husband had filed H.M.O.P.No.470 of 2014 before the Additional Sub-Court, Melur seeking divorce. On 17.03.2015, the petitioner was present and he has filed proof affidavit. The respondent was called absent. Despite granting time, the respondent has not turned up to cross-examine the petitioner. After a perusal of the documents and the proof affidavit, H.M.O.P was allowed, granting divorce in favour of the husband.

3. Thereafter, the wife filed I.A.No.72 of 2016 to condone the delay of 349 days in filing an application to set aside the ex-parte decree. In the said affidavit, the wife has stated that she



was suffering from stomach pain and she had to take care of her mother. Hence, she was taking rest at home and could not attend the hearing on 03.03.2015. Hence, she prayed for condonation of the delay and to set aside the ex-parte decree. The husband has filed a counter contending that the his wife is a Software Engineer and she is aware of the Court proceedings and she had even given statement before social welfare officers that she is not interested in living with the petitioner. The delay is almost one year and the wife is not at all interested in living with her husband and hence, the said petition is only to drag on the proceedings. Based upon the affidavit and the counter, the trial Court arrived at a finding that condonation of the delay of 349 days will only result in great prejudice to the petitioner. The learned Subordinate Judge also found that the wife has not given any proper or legally acceptable reason for the delay of 349 days in setting aside the ex-parte decree. Based upon the said findings, the learned Subordinate Judge was pleased to dismiss the condone delay application. As against the same, the present revision petition has been filed by the wife.

4. The learned counsel for the petitioner had contended that the wife has been absent only due to severe stomach pain and she has to take care of the mother. That apart, she has to travel Chennai for nearly 500 Kilometres. Only because of this, the petitioner could not prosecute the petition in time. However, the learned counsel for the husband contended that this is only to procrastinate the proceedings.

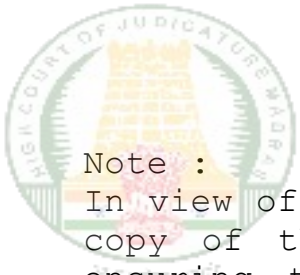
5. Heard the learned counsel for the petitioner as well as the respondent.

6. I find that the condone delay application has been dismissed on 30th August, 2016. It is almost 8 years now and the the learned counsel for both the parties are representing that the parties are not responding to their letters. In view of the above said facts, I do not find any illegality or perversity in the order passed by the learned trial Judge in dismissing the condone delay application. Hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)



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

1. The I Additional Sub Court,
Melur Camp,
Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.R.P (MD) No.492 of 2017
and
C.M.P (MD) No.2321 of 2017
25.04.2022

SP/10/06/2022/3P/3C