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CRP No.3158 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**Civil Revision Petition No.3158 of 2023
and CMP.No.19547 of 2023**

K.J.Selvi @ J.Jayasri

... Petitioner

Vs.

J.Jayaraj

... Respondent

Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order and decree in IA.No.2 of 2022 in OP.No.961 of 2020 dated 13.04.2023 on the file of the Principal Family Court, Chennai.

For Petitioner : Mr.P.Vasanth

For respondent/
Caveator

: Mr.R.Ganesa Moorthy – No appearance.

ORDER

The present Civil Revision Petition has been filed to set aside the order and decree in IA.No.2 of 2022 in OP.No.961 of 2020 dated 13.04.2023 passed by the Principal Family Court, Chennai.

2. The brief facts of the case is as follows:-

The petitioner/wife is the respondent in the OP.No.961 of 2020 filed by the respondent/husband before the Family Court, Chennai. The respondent filed the OP for dissolving the marriage between the parties.



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The petitioner and the respondent got married on 22.08.2010 as per Hindu rites and customs at KSR Thirumana Mandapam, Cuddalore. During the wedlock a male child was born to them. Due to misunderstanding between the parties, the respondent/husband filed OP.No.961 of 2020 for dissolution of marriage on the grounds of cruelty before the III Additional Principal Judge, Family Court, Chennai. The Family Court by an order dated 20.02.2021 allowed the petition, the petitioner/wife was set exparte in the said petition. The petitioner herein filed IA.No.2 of 2022 to condone the delay of 553 days in filing the petition to set aside the exparte decree dated 20.02.2021, after enquiry the same was dismissed on 13.04.2023, challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner contended that the petitioner and the respondent got married on 22.08.2010, out of marriage wedlock a male child was born on 18.02.2012. Thereafter, the respondent/husband purchased a home at Tendral Nagar, Thirumullaivoyal and shifted their residence. The petitioner is a teacher by profession and got employment at Vivekananda Vidyalaya. Due to misunderstanding and harassment, the petitioner left the matrimonial home and stayed at Ulundurpet along with her parents. In the meanwhile, the respondent filed HMOP.No.2815 of 2019 before the Family Court, Chennai mentioning the petitioner/wife residing at Thendral Nagar, Thirumullaivoyil for the relief of



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restitution of conjugal rights and the same was ordered on 06.11.2019.

Thereafter, the respondent/husband filed OP.No.961 of 2020 for dissolving the marriage mentioning the address of the petitioner/wife residing at Thendral Nagar, Thirumullaivoyil.

4. The learned counsel further submits that the respondent/husband knowing that the wife is living at Ulundurpet, conveniently stated the address in both the cases at Thendral Nagar, Thirumullaivoyil. The notices and the summons sent to the petitioner were returned unserved. Thereafter with the approval of the Court effected paper publication mentioning the address at Thendral Nagar, Thirumullaivoyil for the wife, knowing that the house was purchased by him during both the parties were living happily and knowingly that her wife is residing at Ulundurpet, and obtained the order in his favour by furnishing fraudulent address and suppressing the facts and playing fraud upon the Court.

5. On 16.08.2022, after realising all the mistakes, the petitioner went to the respondent house, she was shocked to see that the respondent is living with another girl by name Shanthi. Thereafter, the petitioner lodged a complaint before the Avadi, AWPS. At that juncture, the respondent came to the police station and had produced the copies of the order in OP.No.961 of 2020 and HMOP.No.2815 of 2019. The learned counsel



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states that the respondent being the responsible father of the child cannot abandon the child and make his future miserable. Immediately after the knowledge of the aforesaid orders, the petitioner filed the petition to condone the delay of 553 days to set aside the exparte decree in OP.No.961 of 2020 dated 20.02.2021. Hence, the learned counsel prays for allowing the petition.

6. Heard the learned counsel for the petitioner and perused the materials available on record. The learned counsel for the respondent filed caveat petition before this Court on 16.08.2023. When the case was called in the morning there is no representation on behalf of the respondent and was again taken up at 1.30pm, at that time also there is no representation on behalf of the respondent.

7. On perusal of records it is seen that the respondent/husband had filed the petition for restitution of conjugal rights mentioning the permanent address at Ulundurpet and temporary address at Thendral Nagar, Thirumullaivoyil. In the petition for divorce the respondent has specifically mentioned the address of the petitioner/wife at Thendral Nagar, Thirumullaivoyil. All the notices and summons served on the petitioner at Thendral Nagar address returned as unclaimed, thereafter effected paper publication mentioning the address of the petitioner at Thendral Nagar.



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The respondent knowing that no person were residing at the Thendral Nagar house, played frayed by effecting service on fictitious address and obtained exparte order. Furthermore, the respondent in the OP.No.961 of 2020 filed petition for divorce has not whispered anything about the earlier order obtained by him for restitution of conjugal rights in HMOP.No.2815 of 2019. The respondent in his counter filed in OP.No.961 of 2020 admitted that he had produced the copy of the order for divorce only after he was called by the Avadi All Women Police for enquiry, based on the complaint given by the petitioner. The petitioner was unaware about the order of the Court granting divorce between the parties and after knowing, she immediately knocked the doors of the Court to set aside the exparte decree with a delay of 553days in filing the petition, the trial Court ought to have considered the plea of the petitioner while dismissing the petition.

8. Considering the facts and circumstances of the case, this Court is of the view that the trial Court had failed to consider the valid reasons given by the petitioner and mainly, the respondent itself accepts in his counter that he communicated the copy of the order for divorce only before the Avadi All Women Police Station, when he was called for enquiry based on the complaint given by the petitioner.



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9. In the result, the civil revision petition is allowed by setting aside the order dated 13.04.2023 made in IA.N.2 of 2022 in OP.No.961 of 2020. No costs. Consequently, connected miscellaneous petition is closed.

25.09.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
tsh

To
The Principal Family Court, Chennai.



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