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C.M.A.No.1208 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY**

**C.M.A.No.1208 of 2017
and
C.M.P.No.6157 of 2017**

S.Murugesan

... Appellant

Vs.

R.Suguna

..Respondents

Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act, 1984 against the judgment and decree dated 02.09.2016 made in I.A.No.154 of 2016 in F.C.O.P.No.310 of 2013 on the file of the Family Court, Salem.

For Appellant : Mr.Zeenath Begum

For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed aggrieved by the fair and decretal order dated 02.09.2016 in I.A.No.154 of 2016 in F.C.O.P.No.310 of 2013 on the file of the Family Court, Salem, in and by



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which, the application filed by the respondent/wife to condone the delay of 409 days in filing the application to set aside the exparte decree was allowed by the trial Court.

2. The learned counsel for the appellant would submit that even a perusal of the affidavit filed in support of the application, there is absolutely no reason whatsoever had been mentioned. In that view of the matter, the trial Court ought not to have allowed the application to condone such a huge delay of 409 days.

3. We have considered the said submission made on behalf of the learned counsel for the appellant. Even though the respondent remained absent before this Court, on perusal of the material records of the case, we find that firstly, the respondent is living with two children born out of the wedlock. Secondly, the affidavit filed in support of the application says that in view of the fact that the respondent/wife was misled about the pendency of the divorce application, she did not have knowledge and therefore, the delay had occurred. Therefore, considering the said reason given in the affidavit filed in support of the application and considering the fact that in matrimonial matters atleast one opportunity should be given to the parties to contest the matter on merits, we find no merits in



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the Appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed.

In view of the time lapse, the trial Court is directed to take up the application for setting aside the ex parte decree and to proceed with the same in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
vsi

(J.N.B,J.) (D.B.C, J.)
19.06.2023

To

The Motor Accidents Claims Tribunal,
IV Additional District Court,
Coimbatore.



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J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY, J.

vsi

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