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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

C O R A M

THE HONOURABLE MRS.JUSTICE BHAVANI SUBBAROYAN

C.R.P.3483 of 2023
C.M.P.No.21688 of 2023

Jayachandran ... Petitioner's

Vs

Vinitha ... Respondent

PRAYER:- This Civil Revision Petition has been filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order made in I.A.No.132 of 2023 in HMOP.No.229 of 2020, dated 15.06.2023 on the file of the Family Court, Cuddalore.

For Petitioner : M.R.Thangam
for Mr.P.Muthukumarasamy

ORDER

Originally, the HMOP.No.229 of 2020 on the file of the Family

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Court, Cuddalore, was filed by the petitioner herein under Section 13(1)(ib) of the Hindu Marriage Act, seeking for dissolution of marriage between the petitioner and the respondent.

2. The petitioner herein is the husband. The marriage between the petitioner and the respondent was solemnised on 28.01.2018 at Sengunthar Tirumana Mandapam, Cuddalore as per Hindu rites and custom. After their marriage, they started their matrimonial life at a separate house at Cuddalore as agreed by both families. Due to difference of opinion arouse between them, the respondent left the matrimonial home and started living separately. The petitioner made several attempts to reunite with the respondent which was of no use. Therefore, he filed the a petition for dissolution of marriage in HMOP.No.229 of 2020 on the file of the Family Court, Cuddalore, on 20.01.2018. The petition was posted on various occasions and on 11.12.2020 the matter was posted for respondent's appearance. The respondent misplaced the summons and since, her child was not feeling



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well, she was unable to appear before the trial Court and therefore, she was set *ex-parte* and an *ex-parte* decree was passed in the main HMOP on 22.12.2020. The wife was not taken care by the husband when she was ready and willing to live with the husband. The wife was not able to file a petition to set aside the *ex-parte* within the stipulated time as there was Covid pandemic. Only in the year 2023, she filed a petition to set aside the *ex-parte* decree with a delay of 683 days in I.A.No.132 of 2023 in HMOP.No.229 of 2020.

3. The respondent/husband therein filed a counter stating that he has been ill-treated by the wife from the date of marriage and that there is no chance for reunion and the other averments in the petition cannot be accepted as there are no other reasons stated in the petition for the inordinate delay and that the delay of 2 years is unsustainable and the wanton negligent on the part of the petitioner therein. Therefore, the learned counsel for the petitioner prayed for dismissal of the application, whereas, the trial Court allowed the said application on



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15.06.2023. Challenging the said order, the petitioner herein has filed the present Revision.

4. Heard, the learned counsel for the petitioner and persued the materials available on record before this Court.

5. It is seen that the trial Court has heard the arguments advanced by both the parties and allowed the application in I.A.No.132 of 2023 vide its order dated 15.06.2023. The Family Court was of the view that the matter was adjourned on 16.10.2020 for issuance of notice to the respondent and misread the date as 20.11.2020, on that date, the wife was not present and the matter was further posted to 11.12.2020 and without giving further time, the wife was set ex-parte and the matter was adjourned for taking *ex-parte* evidence on 18.12.2020 and on that date the petitioner was examined and marked documents on his side and an *ex-parte* decree was passed on 22.12.2020. The plea of the wife was also considered by the trial Court

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and at that period in the interest of claiming justice and ensuring that the wife shall be given an opportunity to contest the matter, the trial Court was inclined to allow the application to set aside the *ex-parte* decree on a condition that the wife gives her fullest co-operation in disposal of the original petition and the same was allowed. Challenging the said order, the petitioner herein has filed the present Revision Petition.

6. As rightly observed by the trial Court that there was Covid pandemic and that the wife was having a child to take care of and at that juncture the Court cannot expect the wife to attend the Court proceedings along with the child. Hence, this Court is inclined to confirm the order passed by the trial Court in allowing the application. It was informed to this Court that the husband has not remarried. That being the case, the wife and the child is left all alone. In order to bring an end to the agony, the case can be proceeded further and no unnecessary adjournments to be granted by the trial Court and the wife

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has to appear before the trial Court on all hearings to complete the case.

7. Hence, this Court is not inclined to interfere with the order passed by the trial Court and this civil Revision Petition is disposed of directing the wife to appear before the trial Court on all hearing and no unnecessary adjournments will be granted to the parties. The trial Court is further directed to dispose of the main O.P. Within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also closed.

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Index:Yes/No
Internet:Yes/No
Speaking Order/Non Speaking Order

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To

The Family court, Cuddalore.

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