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*CMP No.21400 of 2022
and CMA No.1916 of 2000*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2023

PRONOUNCED ON : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

**CMP No.21400 of 2022
and
CMA No.1916 of 2000**

Kalaimathy

.. Petitioner

Vs.

R.Manila Gandhi

.. Respondent

PRAYER: This Civil Miscellaneous Petition is filed under Section 151 of Code of Civil Procedure, to set aside the dismissal order and restore CMA No.1916 of 2000, which was dismissed for default on 27.10.2017 on the file of this Court.

For Petitioner/

Appellant : Mr.P.Muthukumar

For Respondent : Mr.R.Srinivas

ORDER

For the sake of convenience, the parties are hereinafter referred to as per ranking before the trial Court.



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2. The wife has filed the Civil Miscellaneous Petition CMP No.21400 of 2022 for restoration of the CMA No.1916 of 2000, which was dismissed for default on 27.10.2017. The record reveals that this application has been filed to condone the delay of 570 days in filing restoration application which appears to have been allowed on 24.11.2022.

3. The brief facts necessary for determination of this Civil Miscellaneous Petition, are as under.

4. The marriage between the petitioner/wife and the respondent/husband was solemnized at Chidambaram on 02.09.1990. Due to matrimonial discord, the respondent/husband filed HMOP No.13 of 1994, before the Sub Court, Chidambaram on the ground of cruelty, desertion and adultery.

5. During the trial, both the parties let in evidence. After contest, the learned Sub Judge, Chidabaram, has allowed HMOP on all grounds viz., cruelty, desertion and adultery and decree was passed on 30.04.1998. After



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passage of a reasonable time, the husband has remarried one Bama on 16.09.1998. It is also seen from the records that the wife filed M.C.No.3 of 1991 and the petition was ordered on 13.11.1992. The petition for restitution on conjugal rights filed by the wife in OP No.58 of 1992 was dismissed for default as early as on 18.12.1993.

6. As stated supra, the divorce decree was allowed on 03.04.1998. It appears that the wife has preferred the above appeal with a delay which was numbered in the year 2000. When the case was listed for final disposal on 27.10.2017, there was no representation on behalf of the wife resulting in the Civil Miscellaneous Appeal, being dismissed for default.

7. As stated supra, by an order dated 24.11.2022 made in CMP No.23415 of 2019, the delay was condoned and hence, this restoration petition.

8. Learned counsel for the petitioner/wife and the learned counsel for the respondent/husband were heard.



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9. As stated supra, the case is being the husband has remarried after decree of divorce and he has also waited for more than six months and remarried on 16.09.1998 only. It appears from the record that the trial court gave a finding that the wife treated the husband with cruelty and wife had deserted the husband without any reasonable causes and also committed adultery.

10. Learned counsel for the petitioner/wife could plea that the finding of “adultery” creates a stigma over the petitioner/wife.

11. Taking into consideration of the entirety of the facts as narrated supra, I am inclined to allow the CMP No.21400 of 2022 and the order dated 27.10.2017, dismissing the Civil Miscellaneous Appeal for default, is set aside and CMA No.1916 of 2000 stands restored to file.

12. Post the Civil Miscellaneous Appeal on 06.02.2023, for hearing.

02.02.2023

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RMT.TEEKAA RAMAN,J.,

ars

**Pre-delivery order in
CMP No.21400 of 2022
and CMA No.1916 of 2000**

02.02.2023