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C.R.P(NPD).No.1467 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(NPD).No.1467 of 2020 &
C.M.P.No.8420 of 2020

T.Thangaraj

.. Petitioner

VS

P.J.Shanthi

.. Respondent

Petition filed under Section 115 of Code of Civil Procedure to set aside the order dated 24.11.2017 in I.A.No.119/2017 in D.O.P.No.1462 of 2015 on the file of the Additional Principal Family Judge, Coimbatore and allow the same.

For Petitioner : Mrs.Veeramarthini

For Respondent : Mr.Udaya P.S.Menon

ORDER

The petitioner is the husband. The wife filed a petition for divorce under Section 10(1) (ix) (x) of Indian Divorce Act, 1869. This DOP ended in an ex-parte decree on 13.06.2016. To set aside the same, an



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application was filed with a delay of 231 days.

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2. According to the affidavit filed by the petitioner, he claims that notice was not served on him. He would further state that there is no willful or wantonness on his part and therefore, the ex-parte decree should be set aside. The application was filed with a delay and therefore, an application was taken out in I.A.No.119 of 2017 to condone the delay of 231 days in filing the petition to set aside the exparte decree.

3. The wife who is the decree holder filed a detailed counter stating that summons were taken to his address and the husband refused to receive the same. She further alleged that the entire idea of the petitioner was to drag on the proceedings, in order to obstruct the relief that had been granted to her. The said application was dismissed, against which the present revision.

4. Heard, Mrs.Veeramarthini, learned counsel for the petitioner and Mr.Udaya P.S.Menon, learned counsel for the respondent.

5. A perusal of the order shows that notice was sent by RPAD. The



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said notice was returned, despite an intimation having been given to the husband. Therefore, the Court had ordered publication and publication was effected. The Court having come to the categorical conclusion that the plea i.e., the summons was not served is a false case projected by the petitioner and finding no other reason set out in the affidavit, dismissed the petition.

6. When the matter came up day before yesterday i.e., on 24.09.2023, I requested Mrs.Veeramarthini to inform her client to pay the arrears of maintenance which comes to about Rs.8,55,000/- as stated by the learned counsel for the respondent. I said, in case, her client was willing to pay a sum of Rs.5,00,000/- being a portion of the arrears of maintenance, the application for condonation of delay can be considered.

7. When the matter was taken up today, learned counsel for the petitioner submits that her client is not in a position to pay the arrears of maintenance. Being a matrimonial matter, where the wife has been successful in obtaining a decree and a case where the petitioner has made false averments regarding the failure of service of summons by the court and further, in the light of the refusal to clear the arrears of maintenance,



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I am not inclined to condone the delay. There is no sufficient cause. The condition precedent for condonation of delay has also not been satisfied.

8. The court below has returned the specific finding that the summons was sent, but it was not claimed by the Civil Revision Petitioner.

10. In the light of the above, as the reason given by the petitioner is a false one, I am not inclined to interfere. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2023

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Index: Yes/No

Speaking order/Non speaking order

Neutral Citation: Yes/No



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To

1. The Additional Principal Family Judge, Coimbatore



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V. LAKSHMINARAYANAN,J.
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