



C.R.P.(MD) Nos.913 & 914 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) Nos.913 & 914 of 2022

G.Saravanakumar

... Petitioner in
both C.R.Ps.

Vs.

B.Vijayalakshmi

... Respondent in
both C.R.Ps.

Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the fair and decreetal orders both dated 14.09.2021 made in I.A.No.2 of 2020 in H.M.O.P.No.315 of 2017 & in I.A.No.2 of 2020 in H.M.O.P.No.316 of 2017 on the files of the Family Court Judge, Sivagangai.

For Petitioner in
both C.R.Ps.

: Mr.A.Esakki

For Respondent in
both C.R.Ps.

: Mr.N.Tamilmani

COMMON ORDER

By this common order, both the Civil Revision Petitions are being disposed of.



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2. The petitioner is aggrieved by the impugned two orders both dated 14.09.2021 passed by the Family Court, Sivagangai in I.A.No.2 of 2020 in H.M.O.P.No.315 of 2017 & in I.A.No.2 of 2020 in H.M.O.P.No. 316 of 2017.

3. By both the impugned orders dated 14.09.2021, the Court has dismissed I.A.No.2 of 2020 filed by the petitioner to condone the delay of 799 days in filing the application for restoration of H.M.O.P.No.315 of 2017 which was dismissed for non-appearance on 10.11.2017 and also dismissed I.A.No.2 of 2020 filed by the petitioner to condone the delay of 782 days in filing the application for setting aside the *exparte* decree dated 04.12.2017 passed in H.M.O.P.No.316 of 2017 respectively.

4. The relevant portion of the impugned orders dated 14.09.2021 in I.A.No.2 of 2020 in H.M.O.P.No.315 of 2017 & in I.A.No.2 of 2020 in H.M.O.P.No.316 of 2017 reads as under:-

<i>Impugned order dated 14.09.2021 in I.A.No.2 of 2020 in H.M.O.P.No.315 of 2017</i>	<i>Impugned order dated 14.09.2021 in I.A.No.2 of 2020 in H.M.O.P.No.316 of 2017</i>
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Point for consideration no 1:

5.Its admitted that the petitioner and the respondent are husband and wife and the petitioner filed OP 315/2017 for divorce and respondent filed counterclaim in OP 316/17 for restitution of conjugal right and the petitioner failed to appear before the court on 10-11-2017 and OP 315/2017 filed for divorce is dismissed for default and OP 316/17 filed by the respondent for restitution of conjugal right is decreed.

6.The petitioner has filed this petition to condone the delay of 782 days caused in filing the application for restoration of the Original Petition in OP. NO.315/2017 which is dismissed for default for non appearance of the petitioner on 10-11-2017 on the ground that he was at Malaysia when OP NO 315/2017 was dismissed for default and that his counsel did not informed him the dismissal for default.

7.The petitioner has not mentioned the date of his departure and date of his arrival in his petition and hence he was directed to produce the passport and he produced the passport on 3-9-2021 in the open court and it is noted that the departure seal is dated 14-2-2018 and arrival seal is dated 13-2-2021. It is admitted that OP. NO 315/2017 is dismissed for default on

Point for consideration no 1:

5.Its admitted that the petitioner and the respondent are husband and wife and the petitioner filed an OP 315/2017 for divorce and respondent filed counterclaim in OP 316/17 for restitution of conjugal right and the petitioner failed to appear before the court on 10-11-2017 and OP 315/2017 filed for divorce is dismissed for default and OP 316/17 filed by the respondent for restitution of conjugal right is decreed.

6.The petitioner has filed this petition to condone the delay of 782 days caused in filing the application to set aside the decree for restitution of conjugal right passed in the Original Petition in OP. NO 316/2017 on 10-11-2017 on the ground that he was at Malaysia when OP NO 316/2017 is decreed and that his counsel did not informed him the decree.

7.The petitioner has not mentioned the date of his departure and date of his arrival in his petition and hence he was directed to produce the passport and he produced the passport on 3-9-2021 in the open court and it is noted that the departure seal is dated 14-2-2018 and arrival seal is dated 13-2-2021. It is admitted that OP. NO 316/2017 is decreed on 10-11-2017. Therefore it is clear that on the date of exparte decree



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5. A perusal of the records indicates that the marriage solemnized between the petitioner and the respondent on 26.06.2015 and that within a period of 13 months, on 21.07.2016, the petitioner filed H.M.O.P.No.57 of 2016 before the Sub Court, Sivagangai which was transferred to the Family Court, Sivagangai and re-numbered as H.M.O.P.No.315 of 2017. Consequently, the respondent filed H.M.O.P.No.316 of 2017 before the Family Court, Sivagangai for restitution of conjugal rights. H.M.O.P.No. 315 of 2017 was dismissed for default for non-prosecution on 10.11.2017 and in H.M.O.P.No.316 of 2017, the petitioner was set exparte on 04.12.2017.

6. Thus, I.A.No.2 of 2020 in H.M.O.P.No.315 of 2017 was filed on 19.02.2020 to condone the delay of 799 days in filing the application for restoration of H.M.O.P.No.315 of 2017 which was dismissed for non-prosecution on 10.11.2017. I.A.No.2 of 2020 in H.M.O.P.No.316 of 2017 was filed on 26.02.2020 to condone the delay of 782 days in filing the application for setting aside the exparte decree passed on 04.12.2017.

7. The Family Court has dismissed both I.As. filed by the petitioner to condone the delay in filing the application for restoration of



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H.M.O.P.No.315 of 2017 which was dismissed for non-prosecution on 10.11.2017 and in filing the application for setting aside the exparte decree passed on 04.12.2017 in H.M.O.P.No.316 of 2017.

8. The learned counsel for the petitioner would submit that the delay in filing the respective applications for restoration of H.M.O.P.No. 315 of 2017 which was dismissed for non-prosecution on 10.11.2017 and for setting aside the exparte decree passed on 04.12.2017 in H.M.O.P.No. 316 of 2017 was neither willful nor wanton as the petitioner was in Malaysia due his avocation.

9. It is submitted that there is no scope for rapprochement and reconciliation between the petitioner and the respondent and that the parties lived together only for a period of 13 months from the date of marriage solemnized on 26.06.2015. It is submitted that the petitioner has lived away from the respondent for a long period and therefore there is no scope for re-union. The learned counsel for the petitioner submits that a fair chance may be given to the petitioner to argue the case on merits in H.M.O.P.No.315 of 2017 and H.M.O.P.No.316 of 2017.



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10. Per contra, the learned counsel for the respondent submits that the affidavit filed by the petitioner before the Family Court, Madurai was a sketchy. It is therefore submitted that the Court has rightly rejected I.As. in the respective H.M.O.Ps. It is submitted that H.M.O.P.No.315 of 2017 was dismissed for non-prosecution on 10.11.2017 itself. The petitioner left for Malaysia on 14.02.2018 and therefore, the petitioner had time to file applications for setting aside the exparte decree passed on 04.12.2017 in H.M.O.P.No.315 of 2017 before 14.02.2018. He therefore submits that these two Civil Revision Petitions should be dismissed.

11. The learned counsel for the respondent further submits that the dispute has already attained finality. Alternatively, it is submitted that in case this Court is inclined to allow these Civil Revision Petitions, for default, the petition may be put to terms.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

13. The marriage between the petitioner and the respondent was solemnized on 26.06.2015. The petitioner has filed H.M.O.P.No.57 of



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2016 before the Sub Court, Sivagangai on 21.07.2016 which was later transferred to the Family Court, Sivagangai and re-numbered as H.M.O.P.No.315 of 2017. Almost 8 years have lapsed since the filing of the H.M.O.P. for dissolving the marriage.

14. It is not clear as to whether by confirming the orders of the Family Court declining to set aside the orders dismissing H.M.O.P.No. 315 of 2017 and allowing H.M.O.P.No.316 of 2017, the parties will reunite and start living as husband and wife. In my view that the petitioner deserves to a fair chance to make out the case before the Family Court, Sivagangai. However, this can be only on terms as admittedly the petitioner has not paid any amount to the respondent during the aforesaid proceedings and thereafter. This Court is inclined to allow these Civil Revision Petitions, thereby, I.A.No.2 of 2020 in H.M.O.P.No.315 of 2017 & in I.A.No.2 of 2020 in H.M.O.P.No.316 of 2017 shall stand allowed on terms.

15. The petitioner shall pay a sum of Rs.1,00,000/- (Rs.50,000/- each of the petitions) to the respondent within a period of four weeks from the date of receipt of a copy of this order. On such payment, I.A.No.2 of



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2020 in H.M.O.P.No.315 of 2017 & in I.A.No.2 of 2020 in H.M.O.P.No.316 of 2017 shall stand allowed. If the amount is paid within such time, the proof for payment shall be produced before the Family Court, Sivagangai.

16. The Family Court shall restore H.M.O.P.No.315 of 2017 & H.M.O.P.No.316 of 2017 to its file and dispose the same as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order.

C.SARAVANAN, J.

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17. These Civil Revision Petitions stand allowed with the terms and conditions. No cost.

07.06.2023

NCC : Yes/No
Internet: Yes/No
Index: Yes/ No
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To
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The Family Court, Sivagangai.

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