



C.R.P.(MD).No.2229 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP (PD)(MD) No.2229 of 2018

B.K.Kannan,

... Petitioner

Vs

Santhanalakshmi,
W/o.P.K.Kannan, Door No.62-B-5, Nadu Theru,
R.R. Puthur,
Balakrishnapuram Post,
Dindigul District 624 005.

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 8.7.2019 made in HMCMA No.21/2018 on the file of the 1st Additional District Court, Madurai order dated 10.11.2014 passed in I.A.No.168/2013 in HMOP.No.36/2003 on the file of the Court of III Additional Sub Court Madurai.



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For Petitioner : Ms.J.Maria Roseline

For Respondent : No appearance

ORDER

The husband is the revision petitioner. Originally, the husband had preferred HMOP No.36/2003 seeking dissolution of marriage with the respondent on the ground of cruelty. The said HMOP came to be dismissed for default on 17.03.2010. The revision petitioner preferred a restoration petition in IA No.168/2013, in time. However, the said application came to be dismissed by the trial Judge. Aggrieved by the dismissal of the said restoration petition, the revision petitioner preferred an appeal in HMCMA No.21/2018 on the file of the I Additional District Judge, Madurai. The said appeal also came to be dismissed, confirming the order of the trial Judge. Aggrieved by the said concurrent findings of the Courts below, the present civil revision petition has been filed.

2. I have heard the learned counsel for the petitioner. Despite notice having been served on the respondent, there is no appearance on behalf of the respondent. In fact, in order to afford an opportunity to the respondent to appear and argue the matter, the above revision was



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adjourned on 30.11.2023 and today also, there is no representation for the respondent.

3. Having heard the learned counsel for the petitioner and having gone through the records, I proceeded to decide the revision.

4. The short question that arises for consideration is as to whether the application filed by the revision petitioner to restore the HMOP that was dismissed for default can be entertained or not. Admittedly, the case of the revision petitioner is that the HMOP was dismissed for default on 17.03.2010. The reasons for non appearance on 17.03.2010 is that by mistake the date of hearing was wrongly noted as '18.03.2010' and therefore, he did not appear on 17.03.2010 resulting in dismissal of the HMOP for non prosecution. However, within the statutory limitation period, an application has been filed in IA No. 168/2013 seeking to restore the HMOP by setting aside the order of dismissal. The trial Court as well as the first appellate Court have dismissed the said application citing other delays on the part of the revision petitioner and the fact that the application was numbered only



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after three years from the date of presentation of the petition. The delay in numbering the CMA has also been taken into account as a reason to non-suit the petitioner. The reasons for the delay have been satisfactorily explained by the revision petitioner stating that instead of preferring an appeal, the petitioner moved this Court by way of revision and the High Court Registry returned the revision papers only on 19.01.2016 and immediately the appeal was preferred without any delay. The subsequent conduct of the petitioner cannot be a ground to deny him a right available under law and procedure.

5. The HMOP has been preferred only by the revision petitioner and therefore, it is he who has approached the Court seeking relief. While so, stating that he did not prosecute the appeal and represented the papers belatedly cannot be put against the revision petitioner. The only point that require consideration, at the hands of the trial Court as well as the appellate Court, was whether the application for restoration of the divorce petition was to be entertained or not. Extraneous circumstances ought not to have been referred or taken note of to non suit the revision petitioner. Considering that the revision petitioner has sought for



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dissolution of marriage with the respondent and in order to render substantial justice, I am of the opinion that the application in IA No. 168/2013, having been filed in time ie., within 30 days from the date of dismissal of the HMOP for non prosecution, the Courts below ought to have allowed the said application and directed the parties to go for trial and decide the main issues in the HMOP on merits and in accordance with law. However, without doing so, on extraneous grounds, the petition has been dismissed. Admittedly, there is no delay in filing IA No.168 of 2013 and the Courts below erroneously dismissed the said application. The reasons assigned by the revision petitioner are also very much plausible and cannot be rejected or disbelieved.

6. For all these reasons, I am of the view that the trial Court as well as the appellate Court erred in dismissing the restoration petition, which was filed in time. In fine, the Civil Revision Petition is allowed and the order in IA No.168 of 2013 in HMOP No.36/2003 dated 08.07.2019 is set aside and consequently, the HMOP No.36/2003 on the file of the III Additional Sub Court, Madurai, is restored to file.



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7. Considering that the HMOP is of the year 2003, the III Additional Sub Court, Madurai, shall endeavour to decide the HMOP on merits and in accordance with law, expeditiously, in any event, on or before, 30.06.2024. No costs.

05.12.2023

NCC : Yes/No

Index : Yes/No

RR

To

1.The I Additional District Court, Madurai.

2.The III Additional Sub Court, Madurai.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI, J.

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