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C.R.P.(PD) No.503 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

C O R A M

THE HONOURABLE MR. JUSTICE M. NIRMAL KUMAR

C.R.P.(PD).No.503 of 2024

A. Geetha

... Petitioner

Versus

G.Senthil Kumar

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the docket order dated 25.09.2023 on the file of the Sub Court, Alandur, dismissing I.A.No.1 of 2023 against O.P.No.1100 of 2021 on the ground of non-payment of costs of Rs.3,000/- and consequently, restore the same.

For Petitioners : Mr.A.Ayyamperumal

For Caveator : Mr.S.Ramdoss

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ORDER

The petitioner/wife of the respondent had filed a divorce petition on the ground of cruelty in O.P.No.1100 of 2021, which is pending adjudication before the Sub Court, Alandur.

2. Initially, the Divorce Petition was filed before the Sub Court, Tambaram in O.P.No.690 of 2019 and thereafter, after bifurcation and formation of the Sub Court, Tambaram, it was transferred and assigned as O.P.No.1100 of 2021 during the month of January, 2021. The case was pending for six months for issue of process from 23.01.2020 to 02.07.2020. Thereafter, it was posted for written submission for about five months. Subsequently, the case was transferred for mediation on several occasions and finally, when the case was listed on 15.10.2022 as Serial Number 103, the petitioner though came to the Court, due to crowding, he was unable to appear when the case was called. Later the petitioner came to know that O.P. was dismissed for default and thereafter, she filed I.A.No.1 of 2023 under Order IX Rule 9 of C.P.C. to set aside the dismissal order. Thereafter, on 24.08.2023, as no serious objection was raised by the respondent, the Lower Court ordered



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restoration of O.P. with a condition that the petitioner has to pay costs of Rs.3,000/- to the respondent on or before 21.09.2023. On 21.09.2023, when the case was called, the petitioner filed a petition under Section 35B r/w Section 151 of C.P.C. and the case was adjourned to 25.09.2023. On 25.09.2023, since the costs was not paid by the petitioner, I.A.No.1 of 2023 and the petition filed under Section 35B of C.P.C. were dismissed.

3. The contention of the petitioner is that the costs cannot be imposed on the petitioner as the petitioner was not the cause for the delay. Hence, he has filed this Civil Revision Petition against the order dated 25.09.2023 passed in I.A.No.1 of 2023 in O.P.No.1100 of 2021. In support of his contention, he relied on the judgment of the Hon'ble Supreme Court in the case of *Manohar Singh Vs. D.S.Sharma and Another* reported in (2010) 1 SCC 53.

4. The learned counsel for the respondent, without going into the merits of the case, has straight away given no objection for restoration of the suit for the simple reason that the petitioner had left the matrimonial home in the year 2017 along with the minor girl baby and from 2017, the respondent



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husband has not been permitted even to visit the girl baby. On the other hand, she had filed a divorce petition in the year 2019 initially before the Sub Court, Tambaram and thereafter, it was transferred before the Sub Court, Alandur, and the same is pending.

5. From the adjudication, it could be seen that how the petition is kept pending without any progress from the year 2017. The respondent is not the reason for any delay. His only concern is early disposal of H.M.O.P.No.1100 of 2021.

6. The learned counsel for the respondent submits that in the interregnum period, the petitioner/wife had filed a domestic violence complaint in D.V.C.No.26 of 2022, which is pending before the Additional Mahila Court, Alandur. In this case also, the respondent gives no objection and inclined to receive the costs and submits that this case may be allowed with a direction to complete the proceedings in H.M.O.P.No.1100 of 2021.



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7. Recording the above-said submission, this Civil Revision Petition is allowed with a direction to the Sub Court, Alandur, to complete the proceedings in H.M.O.P.No.1100 of 2021 within a period of three (3) months from the date of receipt of a copy of this order. No costs.

10.07.2024

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To
The Sub Court, Alandur.



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M. NIRMAL KUMAR, J.

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