



C.R.P.No.292 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.292 of 2022

R.Uma

..Petitioner

Vs.

T.R.Ganesh

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 14.09.2021 made in I.A.No.1 of 2019 in HMOP.No.1964 of 2016 on the file of the Principal Family Court, Chennai.

For Petitioner : Mr.T.Mohan, Senior Counsel
for Mr.M.Murali

For Respondent : Mr.M.Albun Gurusu



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ORDER

Challenge in this revision is to the order of the Family Court refusing to condone the delay of 927 days in filing the petition seeking to set aside the *ex parte* decree that was passed in HMOP.No.1964 of 2016.

2. The respondent/ husband filed HMOP.No.1964 of 2016 under Section 13(1)(ia) of the Hindu Marriage Act seeking divorce on the ground of cruelty. An *ex parte* decree came to be passed on 26.10.2016. Subsequently, the petitioner/ wife filed an application to set aside the *ex parte* decree along with a counter in the HMOP with a delay of 927 days, claiming that no notice was served on her in the OP proceedings and she came to know about the *ex parte* decree only in the fourth week of April 2019. Claiming that the respondent who is a Post Master has manipulated the Court notices and obtained an *ex parte* decree without proper service, the petitioner sought for condonation of delay.

3. This petition was seriously opposed contending that the petitioner was served with notice in the application for divorce proceedings and therefore the reasons assigned are insufficient apart from being false. Evidence was also recorded in this application. From



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the evidence it appeared that there was no proper service on the petitioner in the proceedings in HMOP.No.1964 of 2016.

4. I had called for the entire records. The records in HMOP have been placed before me today. The HMOP was taken on file on 27.05.2016 and notice was ordered returnable by 29.06.2016. I find the following endorsements regarding service of notice on the respondent:

5. On 29.06.2016 the following note order was passed by the learned Family Judge:

“The Court notice returned as out of station affixed. Registered Post returned as left. Fresh notice returnable by 16.08.2016.”

6. On 16.08.2016 the following endorsement was made by the learned Family Judge:

“The Court notice returned as out of Station Postal cover returned as unclaimed. Issue Court notice through post and private notice along with affidavit of service by 16.09.2016.”



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7. On 16.09.2016 again postal notice returned with endorsement left. Again the following endorsement was made by the learned Family Judge:

“Postal notice – left. Court notice – Out of station.”

8. After recording the above, the learned Family Judge ordered fresh notice through Court and also directed substituted service returnable by 28.09.2016. On 28.09.2016, the learned Family Judge ordered substituted service by 17.10.2016. On 17.10.2016, the learned Family Judge received the proof affidavit of PW1 marked Exs.P1 to P4 and adjourned the case “for orders” on 25.10.2016. On 25.10.2016, the case was adjourned to 26.10.2016 for want of time and an *ex parte* decree came to be passed on 26.10.2016. The learned counsel for the respondent admits that no publication was effected.

9. From the above endorsements it is very clear that no proper service was effected on the respondent. It should also be pointed out that in the cross-examination the respondent has admitted that his wife left the matrimonial home on 23.04.2016. Of course, he has added that she



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came four or five times till end of May. He would also admit that she did not visit his house after May. However, notice was taken to the respondent's address itself. This shows that there has been a clear attempt to hoodwink the Court and obtain an *ex parte* order. Unfortunately, the Court has also obliged the respondent/ husband by granting an *ex parte* order without proper notice. This reflects very sad state of affairs in matters of divorce which are very seriously contested and which have a very serious bearing on the rights of the parties. The Court will have to be careful and ensure that proper service is effected. These proceedings demonstrate the careless and recalcitrant manner in which service of notices are dealt with by the Family Courts.

10. I have no hesitation to conclude that the entire proceedings in O.P.No.1964 of 2016 have been carried out in a manner prejudicial to the wife and without proper service of notice on her. The learned Family Judge who considered the condone delay application at least should have been a little more careful and should have seen records before concluding that there was proper service of notice in OP. The findings that there was proper service of notice in OP and that the wife had knowledge of the proceedings have been rendered with out even looking



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in to the records. I therefore have no hesitation in concluding that the order of the Family Court needs to be set aside and it is accordingly set aside.

11. This Civil Revision Petition is **allowed**. The delay of 927 days in filing the application to set aside the *ex parte* decree is condoned. Taking note of the fact that the *ex parte* decree itself was passed without proper notice, I invoke the powers under Article 227 of the Constitution of India and set aside the *ex parte* decree itself. The OP.No.1964 of 2016 will stand restored and the parties will appear before the Principal Family Court, Chennai on 12.02.2024. The Family Court will take on file the counter filed by the wife and proceed to dispose of the OP in accordance with law. No costs.

24.01.2024

dsa
Index : Yes/No
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Speaking order / Non-Speaking order



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To

The Principal Judge,
Family Court, Chennai.



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R.SUBRAMANIAN,J.

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