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CRP.No.1184 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.1184 of 2022
and CMP.No.6300 of 2022

Madhammal	...	Petitioner
	Vs.	
Chandran	...	Respondent

PRAYER : This civil revision petition has been filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 11.01.2021 passed in CMA.No.4 of 2018 on the file of the Principal District Judge, Krishnagiri confirming the fair and decreetal order in I.A.No.21 of 2016 in HMOP No.101 of 2015 on the file of the Additional Special Court, Krishnagiri.

For Petitioner	...	Mr.R.Ezhilarasan
For Respondent	...	Mr.G.Selvi George

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order dated 11.01.2021 passed in CMA.No.4 of 2018 on the file of the Principal District Court, Krishnagiri, confirming the fair and decreetal order in I.A.No.21 of 2016 in HMOP No.101 of 2015 on the file of the Additional Special Court, Krishnagiri.



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2.The learned counsel appearing for the petitioner submitted that the petitioner is wife. The respondent is the husband. The respondent filed a divorce petition in HMOP.No.101 of 2015 on the file of the Principal District Court, Krishnagiri. For non-filing of the counter and non appearance of the petitioner, an exparte order was passed on 30.03.2016. To set aside the exparte order, the petitioner filed an application in I.A.No.21 of 2016 in HMOP No.101 of 2015 along with counter and there was a delay in representing the petition cited some mistakes by the Registry and thereafter, it was taken on file and dismissed by passing the impugned order dated 14.09.2017 on the ground that the petitioner is not interested in conducting the case. Aggrieved by this, the petitioner filed CMA No.4 of 2018 before the Principal District Judge, Krishnagiri. The Appellate Court also not properly considered the petitioner's case and dismissed the CMA, aggrieved by this order, the petitioner filed this civil revision petition challenging the order passed by the appellate Court. The learned counsel further contended that without filing a counter and without hearing the petitioner, divorce has been granted on the ground of adultery



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allegation, so, an opportunity has to be given to the petitioner/wife to defend the allegation of adultery, therefore, seeking to allow the civil revision petition.

3.The learned counsel appearing for the respondent supported the order of the impugned and further contended that there was sufficient document and oral evidence adduced by the respondent to prove adultery activities of the petitioner/wife. On merits, considering the evidence, the learned judge passed divorce decree and no need to interfere with the impugned order, therefore, seeking to dismiss the civil revision petition.

4.I have considered the matter in the light of the submission made by the learned counsel on either side and perused the materials available on record.

5.On perusal of the records, it is noticed that the petitioner is wife. The respondent is the husband. They married on 03.06.2009. Due to difference of opinion, the respondent filed a divorce petition in HMOP



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No.101 of 2015 and notice was served to the petitioner and an advocate

M.Babu filed vakalat for the petitioner on 29.09.2015. The case was posted for counter till 31.03.2016. Since the petitioner has not filed counter, set exparte the petitioner on 31.03.2016 and exparte decree was passed on 06.06.2016. Thereafter, the petitioner filed an application to set aside the exparte decree. Since the petitioner mentioned a wrong provision, it was returned by the Court on 20.04.2016 to correct the defect and there was a delay in representing the petition on 19.08.2016 after rectification of the mistakes. Thereafter, the representing petition was dismissed on the ground that the petitioner was not interested in conducting the case, aggrieved by this, the petitioner filed CMA.No.4 of 2018, which was also dismissed.

6.Further, on perusal of the affidavit, it is noticed that due to ill health, the petitioner was not able to contact her advocate and filed counter within time. The absence was only for bonafide reasons. Sufficient cause is a question of fact and the Court has to exercise its discretion in the case on hand and there cannot be a strait jacket formula of universal application. The Court has to consider the attendant facts and circumstances. Further, in



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this case, the respondent/husband raised serious allegations of adultery against the petitioner/wife. Under these circumstances, the petitioner/wife has to defend the allegation, therefore, the Court has to give sufficient opportunity to file counter and to defend her case. 'Sufficient cause' means that a party should not have acted in a negligent manner or there was want of bonafide on its part, in view of the facts and circumstance of the case, or it cannot be alleged that the party has “not acted diligently or “remained inactive”. The Court has to see the reasons stated in the affidavit for not contacting the advocate, it is stated that due to ill health, not able to conduct the advocate. Under such circumstances, the trial Court has not considered the reason stated by the petitioner and a fair opportunity has to be given to the petitioner/wife to meet the allegation of adultery raised by the respondent/husband. Therefore, the impugned order is hereby set aside and the civil revision petition is allowed and after accepting the counter, the trial Court is directed to conduct an enquiry and decide the case on merits within a period four months.

Index : Yes/No
Internet : Yes/No
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To
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- 1.The Principal District Court,
Krishnagiri.
- 2.The Additional Special Court,
Krishnagiri.



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V.SIVAGNANAM ,J.

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