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Crl.R.C.No.610 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**Crl.R.C.No.610 of 2024
And
Crl.M.P.No.5677 of 2024**

S.Gajendrababu

... Petitioner

Vs.

G.Gajalakshmi

... Respondent

Prayer:

Criminal Revision Case filed seeking to set aside the order dated 22.01.2024 passed by V Additional Principal Family Court at Chennai in Crl.M.P.No.1310 of 2023 in M.C.No.09 of 2019.

For Petitioner : Mr.N.Srinivas Jayaprakash
For Respondent : NDW

O R D E R

The criminal revision case has been filed seeking to set aside the order dated 22.01.2024 passed by the V Additional Principal Family Court at Chennai in Crl.M.P.No.1310 of 2023 in M.C.No.09 of 2019.



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2.The case of the petitioner is that the petitioner is the husband and the respondent is the wife. Their marriage was solemnized on 12.09.1991. Thereafter there was a matrimonial dispute between them and the respondent filed maintenance case in M.C.No.9 of 2019 before the V Additional Principal Family Court at Chennai on the ground that the petitioner is not maintaining the respondent and the said maintenance case was dismissed for default on 27.07.2023. Thereafter, the respondent filed Crl.M.P.No.1310 of 2023 in M.C.No.09 of 2019 seeking to condone the delay of 23 days in filing the petition seeking to set aside the order dated 27.07.2023 and the said petition was allowed on 22.01.2024 with cost of Rs.1,000/-. Challenging the same, the present revision has been filed.

3.The learned counsel for the petitioner submitted that prior to the filing of maintenance case there was settlement inbetween the petitioner and the respondent and the respondent received a sum of Rs.41 Lakhs in lumpsum as compensation and the same was disclosed in the petition. Thereby, the Family Court dismissed the maintenance case for default since the respondent did not appear before the Court. However, the reason for filing Crl.M.P.No.1310 of



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2023 seeking to condone the delay of 23 days in filing the petition seeking to set aside the order dated 27.07.2023 was not properly explained and no evidence was adduced. Even then, the Family Court allowed the said petition with cost is not sustainable one. The learned counsel further submitted that the petitioner adduced evidence and the same was not properly adjudicated by the Family Court.

4.Heard the learned counsel appearing for the petitioner. Since this Court is not inclined to pass any adverse order as against the respondent, notice to the respondent is dispensed with.

5.The facts of the case and the relationship between the parties is not disputed. For non maintenance, the respondent filed petition under Section 125 of Cr.P.C. before the V Additional Principal Family Court at Chennai. The Family Court dismissed the maintenance case on the ground that the respondent not appeared. However, the respondent filed petition seeking to condone the delay of 23 days in filing the petition to set aside the dismissal order and the said petition was allowed with cost of Rs.1,000/-. It is equally undisputed fact that the delay petition was entertained with cost based on the



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discretionary power available for the Family Court which cannot be interfered with. There must be proper adjudication in the maintenance case with regard to payment of compensation as well as whether the respondent is entitled to compensation or not. It cannot be dismissed at threshold and all the issues have to be properly adjudicated.

6.In view of the above, this revision is dismissed. However, liberty is granted to the petitioner to canvass all the points before the V Additional Principal Family Court at Chennai during the trial in M.C.No.9 of 2019. Consequently, the connected miscellaneous petition is also closed.

01.04.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The V Additional Principal Family Court at
Chennai.

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