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C.R.P.No.2614 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2024

PRONOUNCED ON : 04.10.2024

CORAM

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P.No.2614 of 2022

Ashwant Akula Venkatram

... Petitioner

Versus

Divya Rayapti

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 25.04.2022 passed in I.A.No.1850 of 2015 in O.P.No. 4028 of 2013 passed by the IV Additional Family Court, Chennai.

For Petitioner : Mr.S.P.Arthi

For Respondent : Mr.A.K.Sriram
for Mrs.S.Kanaga Priya



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ORDER

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This Civil Revision Petition has been preferred as against the order passed by the IV Additional Family Court, Chennai in I.A.No.1850 of 2015 in O.P.No.4028 of 2013 dated 25.04.2022, wherein this petitioner has filed the petition to condone the delay of 34 days in filing the petition to set aside the exparte decree passed against him dated 17.12.2014. The Trial Court has dismissed the petition, against which the present revision is preferred by the petitioner.

2. The short facts necessary to dispose of this petition are as follows.

The petitioner herein is the respondent in the main original petition. The respondent herein has filed a petition for a relief of declaring the marriage between the petitioner and the respondent dated 25.11.2012 at Hotel Leela Palace, Chennai as null and void and also directing the respondent to pay a sum of Rs.30,00,00,000/- (Rupees Thirty Crores only) towards permanent alimony. The said case was decreed ex-parte. The decree was passed on 17.12.2014. As per the ex-parte decree, the marriage solemnized between the



petitioner and the respondent was declared as null and void and also the Trial Court directed to pay a sum of Rs.10,00,00,000/- (Rupees Ten Crores only) to the wife by the husband. Thereafter, this petitioner filed a petition to set aside the ex-parte decree passed against him along with petition under Section 5 of the Limitation Act to condone the delay of 34 days. The petitioner is an American citizen and has been residing in USA even prior to his Marriage. No notices were served to him in the above proceedings and came to know about the proceedings where nullity action initiated by the respondent only when the notice of the execution proceedings was served on his mother at Chennai. Thereafter, he filed petition to set aside the ex-parte decree along with condone delay petition. The Trial Court dismissed the petition, against which the present Revision is filed.

3. The learned counsel appearing for the petitioner would contend that the petitioner is an American Citizen and the respondent is his wife. Due to misunderstanding, the respondent filed O.P.No. 4028 of 2013 seeking to declare the marriage as null and void alleging that the petitioner is an Atheist and he did not believe in the marriage rituals and also sought for



Rs.30,00,00,000/- (Rupees Thirty Crores only) as permanent alimony. The said petition was allowed on 17.12.2014 and also Rs.10,00,00,000/- (Rupees Ten Crores only) was award as alimony. In fact no notices were served to the petitioner and he came to know about the decree, only the notice served on his mother at Chennai in execution proceedings. Therefore, he filed a petition to set aside ex-parte decree with a delay of 34 days and said petition was dismissed by the Trial Court.

4. In the condone delay petition, the petitioner has categorically stated that there was no proper notices served on the petitioner. If notices were served on him, he would be the first person to appear before this Court and appropriately defend his case by proving genuineness of the petitioner and he has no intention to avoid the Court proceeding at any circumstances. Therefore, the petitioner has clearly explained the delay in filing the petition to set aside the ex-parte decree. But the Trial Court failed to consider the same and erroneously dismissed the petition. Therefore the order passed by the Trial Court is liable to be set aside.



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5. The learned counsel appearing for the respondent would contend that the averments in the petition are conspicuous by the absences of date of knowledge or any other relevant details. The only contention of the petitioner is that no previous notices served on him but infact he very well know about the pending proceedings. The Family Court also stated that on the records available that notices have been served on the petitioner for the hearing date on 16.12.2013 and again notices were served on 05.03.2014. Therefore, the Trial Court has passed a reasoned order based on the records. Already C.R.P.No.4818 to 4821 of 2013 was filed and this petitioner also participated in that petition. As per the order dated 20.06.2014 this Court directed the Family Court to dispose the O.P.No. 4028 of 2013 and O.S.No. 246 and 256 of 2013 within a period of six months and directed both the parties to cooperate with the Trial Court. In spite of same, the petitioner has not appeared in O.P.No. 4028 of 2013 notwithstanding the fact that he has been represented by the Counsel before this Court. Therefore, the contention of the petitioner that no notices were served on him is not acceptable one. Moreover, after the order passed by the Trial Court, the respondent got marriage with another man. Any



order of this Court condoning the delay would have legal effect of situation by its respondent's subsequent marriage being valid and the marriage between the petitioner and the respondent being reviewed by this Court. The petitioner also no intention to live with the respondent. Subsequent marriage has happened 9 years ago and there is a child in subsequent marriage who was born in 2016. The third party interest especially touching upon the matrimonial status have corrupt in. The Trial Court after take into consideration of the marriage expenses and other aspects only award a sum of Rs.10,00,00,000/- (Rupees Ten Crores only). Therefore, the order passed by the Trial Court is in order and the present petition is liable to be dismissed.

6. The learned counsel appearing for the respondents has relied on the following judgments: (i) ***Smt. Lila Gupta vs. Laxmi Narain and others*** reported in ***1978 3 SCC 258*** (ii) ***A. Raja Sundari vs. Suresh Kumar*** reported in ***2016-2-L.W.333***. (iii) ***Anuraj mittal vs. Shaily Mishra Mittal*** reported in ***(2018) 9 SCC 691*** (iv) ***K.Vimala Vs. A.Saravanan and another*** in ***C.M.P.No. 3608 of 2019 in C.M.A.Sr.No. 8842 of 2018*** dated 28.02.2019 on the file of this Court.



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7. This Court heard both sides and perused the materials available on record.

8. In this case, the petitioner has filed the petition before the Trial Court to condone the delay of 34 days in filing the petition to set aside the ex-parte decree and the same was dismissed. According to the petitioner, no notice was served to him in the original petition. But the Trial Court in the order recorded that notices were served to the petitioner on 16.12.2013 and 05.03.2014 and also the petitioner defended in C.R.P.No. 4818 to 4821 of 2013 through counsel and where the O.P.No. 4028 of 2013 and O.S.No. 246 and 256 of 2013 taken up for consideration and directed to dispose the case and also directed the parties to cooperate with the Trial. While so, the petitioner has knowledge about the case and the date of disposal of the C.R.P.No. 4818 to 4821 of 2013 is 20.06.2014 the date of order passed by the Trial Court in this case is 17.12.2014.

9. The Trial Court also recorded in the order that “the High Court in



CRP No. 4818 to 4821 of 2013 was directed the 1st Additional Principal Court to dispose of O.P.No.4028 of 2013 and O.S.No. 246 and 256 of 2013 within a period of six months from the date of receipt of copy of the order. The order has been pronounced on 20.06.2014 when the petitioner has also represented through counsel Mr.S.Sivakumar. So the husband is aware of the proceedings in O.P.No.4028 of 2013 on 20.06.2014 itself. It is only after this order, the husband has been set exparte in O.P.No. 4028 of 2013 on 02.07.2014. In other cases, the O.S.No. 246 of 2013 and O.P.No. 4028 of 2013 have been pending before the 1st Additional Family Court and the husband has entered appearance through his Power of Attorney on 04.09.2015 in the suit in O.S.No. 246 of 2013.” Therefore the Trial Court declined to accept the reasons stated by the petitioner. Though the petitioner has appeared in the C.R.P. before the High Court through Counsel, there are no records to show that notice was served to the petitioner in this particular case. The Trial Court also recorded the dates of service of notice but no documents to show that the notice was served on the petitioner. It is admitted fact that the petitioner was in abroad, so it is the duty of the respondent to prove that the notice was duly served to the petitioner in accordance with law, but no any records available to



prove the same. Considering the nature of proceeding and also number of days delay is only 34 days and the Trial Court also without any materials awarded a sum of Rs.10,00,00,000/- (Rupees Ten Crores only) and dissolved the marriage on the ground that the petitioner is an Atheist. Further there is a delay on the part of the Court in numbering the exparte set aside petition and though the respondent after the divorce got married within short span of 34 days, the right of the petitioner cannot be curtailed only because of the short delay in filing the petition and considering all the above aspects, this Court is inclined to allow this petition on payment of cost of Rs.10,000/- to be paid by the petitioner to the respondent.

10. As far as the judgments relied upon by the respondent are concerned, they will not be applicable to the present facts of the case. Because in this case, no records to show the service of notice to the petitioner and the Trial Court has not passed reasoned order and without any material awarded permanent alimony of huge amount of Rs.10,00,00,000/- (Rupees Ten Crores only) and ground for nullity of marriage is also not in accordance with law. Therefore it needs elaborate Trial.



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11. In the result, this Civil Revision Petition is allowed and the order passed by the IV Additional Family Court, Chennai in I.A.No.1850 of 2015 in O.P.No.4028 of 2013 dated 25.04.2022 is set aside and the petitioner is directed to deposit a sum of Rs.10,000/- before the Trial Court in the said case number within a period of 15 days from the date of receipt of copy of this Order. After deposit, the respondent is at liberty to withdraw the said amount on proper application. No cost.

04.10.2024

Index:Yes/No.

Internet:Yes/No.

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To

The IV Additional Family Court, Chennai.



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P.DHANABAL.J.,

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