



WEB COPY



CRP. NPD.No.2143 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.10.2024

Pronounced on:04.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. NPD. No.2143 of 2022

Sangeetha

... Petitioner

Vs

R.Chinnasamy (Died)

R.Gopiyammal

... Respondent

Prayer: The Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and final order passed in I.A. No.01 of 2020 in HMOP No.1653 of 2018 dated 25.02.2022 on the file of the Principal Family Court at Coimbatore, by allowing the present Civil Revision Petition.

For Petitioner : Mr.Ma.P.Thangavel

For Respondent : Sole respondent died.

ORDER

The revision petitioner is the wife of the deceased Chinnasamy.

The deceased Chinnasamy filed HMOP No.1653 of 2018 for dissolution



CRP. NPD.No.2143 of 2022

of the Marriage between the revision petitioner and himself and an exparte decree came to be passed by the learned Principal Family Court Judge, Coimbatore on 13.09.2019.

2. The revision petitioner filed an Application seeking to condone the delay of 122 days in filing the Application to set aside the exparte decree. In the meantime, the husband, Chinnasamy passed away and therefore, in I.A. No.1 of 2022, (Section 5 Application), the revision petitioner arrayed his mother, Gopiyammal as the respondent, she being the Class 1 legal heir of the deceased Chinnasamy.

3. The Principal Family Court, Coimbatore finding that the revision petitioner has not explained the delay satisfactorily and also in view of the demise of the husband, dismissed the condonation of delay petition. The Family Court relied on the decision of the Hon'ble Supreme Court in *Smt.Yallawwa Vs. Smt.Shantavva*, reported in (1997) 11 SCC 159. Aggrieved by the said order, the wife has preferred the present revision petition.

4. I have heard Mr.Ma.P.Thangavel, learned counsel for the



revision petitioner, despite service of the notice on the respondent, the mother in law of the revision petitioner, the respondent has not chosen to appear either in person or through the learned counsel.

5. The learned counsel for the revision petitioner Mr.Ma.P.Thangavel, would submit that the exparte decree in HMOP came to be passed on 13.09.2019 and on the very next date, the revision petitioner's husband Chinnasamy died. He would further submit that the revision petitioner was continuing to reside alongwith her husband under the same roof and when she received notice in the Divorce proceedings, her husband had informed her that he would be withdrawing the same and only under such circumstances, the revision petitioner did not chose to contest the Original Petition. This is the reason set out in the affidavit in support of the Application for condonation of delay as well.

6. According to the revision petitioner, she came to know about the exparte judgment and decree only when her sister in law (sister of her deceased husband) trying to get compassionate appointment in the place where her husband was employed at the time of demise. However, according to the learned counsel for the petitioner, the Family Court has



not appreciated the contentions advanced by the revision petitioner by adducing sufficient and satisfactory reasons for not being able to file the Application to set aside the exparte decree in time.

7. The learned counsel for the revision petitioner would also state that in a case of this nature, when invoking provisions of Order IX Rule 13 CPC, the right to sue would survive and an opportunity should be given to the aggrieved spouse to wipe out the social stigma that may come to be attached on her by virtue of the exparte decree.

8. The learned counsel would also place reliance on the very same decision of the Hon'ble Supreme Court in the case of *Smt.Yallawwa Vs. Smt.Shantavva*, reported in (1997) 11 SCC 159. in support of his contentions.

9. I have carefully considered the rival submissions advanced by the learned counsel for the petitioner and I have also gone through the impugned order passed by the Principal Family Court Judge, Coimbatore.

10. The revision petitioner admits to the fact that her husband had



filed HMOP No.1653 of 2018 and she had also received notice from the Court regarding the above said proceedings. However, it is her specific case in the affidavit in support of the condonation of delay application that when she confronted her husband with regard to the HMOP filed by him, her husband had assured her that he would be withdrawing the said HMOP and therefore, believing the said representation of her husband, the revision petitioner did not choose to appear and contest the said proceedings.

11. In the affidavit, it is averred by the petitioner that though her husband died on 14.09.2019 and the exparte decree came to be passed on the previous day viz., 13.09.2019, none of the relatives or her husband disclosed the fact that her husband had obtained an exparte decree against her. The petitioner has also clearly averred as to the date of knowledge of the exparte judgment by contending that only when her Application for compassionate appointment to the employer of her deceased husband was made, she was informed about the claim made by her sister in law, that is the sister of her husband, who was also trying to get compassionate appointment. Thereafter, the revision petitioner has chosen to contact her lawyer and after obtaining the status of the case has



taken out the application to set aside the exparte decree along with the application to condone the delay.

12. It is not in dispute that the husband passed away on the very next day, after the judgment being passed in HMOP No.1653 of 2018, exparte, dissolving the marriage between the revision petitioner and the said deceased R.Chinnasamy. In *Smt.Yallawwa's* case (referred herein supra) before the Hon'ble Supreme Court, it is held that when a decree of divorce was obtained by one of the spouses under Section 13 of the Hindu Marriage Act, 1955 and the decree holder/spouse died either before or during pendency of proceedings initiated by the aggrieved spouse, either by way of an Appeal or by way of an Application under Order IX Rule 13 CPC for setting aside the decree, than such proceedings challenging the decree would be maintainable.

13. The Hon'ble Supreme Court further held that the view that divorce proceedings represented personal cause of action and therefore, right to sue would not survive and the proceedings challenging the decree would stand abated, cannot be sustained as cause of action would survive qua the estate of the deceased spouse in the hands of his/her legal heirs. It



is in line with the ratio laid down by the Hon'ble Supreme Court that the revision petitioner has impleaded the mother of the deceased husband as the respondent in the condone delay and setting aside Applications. Moreso, when an Application has been made for compassionate appointment by the revision petitioner and parellely her sister in law has also made a claim in view of the demise of her brother, that is the husband of the revision petitioner, it cannot be said that the cause of action does not survive. It would always be open to the revision petitioner to challenge the exparte decree and have it set aside in a manner known to law, so that she can come clean on the allegations made against her by her deceased husband in the divorce petition.

14. Unfortunately, the Trial Court has not understood the ratio laid down by the Hon'ble Supreme Court in *Smt.Yallawwa's* case (referred herein supra), in a proper perspective and despite placing reliance on the same, proceeded to dismiss the Application seeking condonation of delay. The Trial Court has also not appreciated the fact that the petitioner has shown sufficient cause for not filing the application in time and had satisfactorily explained the delay of 122 days. Therefore, even on this aspect, the Trial Court erred in refusing to condone the delay. Thus, from



CRP. NPD.No.2143 of 2022

the foregoing I am unable to sustain the order of the Family Court,
Coimbatore in I.A. No.1 of 2020.

15. In fine, the Civil Revision Petition is allowed and the I.A. No.1
of 2020 in HMOP NO.1653 of 2018 dated 25.02.2022 is hereby set
aside. There shall be no order as to costs.

04.10.2024

Index:Yes/No

Speaking order/Non-speaking order

rkp

To

1.The Principal Family Judge at Coimbatore

3.The Section Officer,
VR Section,
Madras High Court,
Chennai.



WEB COPY



CRP. NPD.No.2143 of 2022

P.B.BALAJI, J.

rkp

**Pre-Delivery Order in
CRP. NPD. No.2143 of 2022**

04.10.2024



WEB COPY



CRP. NPD.No.2143 of 2022

CRP. NPD. No.2143 of 2022

P.B. BALAJI, J.

Subsequent to the order being pronounced, Mr.Ma.P.Thangavel, learned counsel for the petitioner seeks a direction to number the set aside Application filed before the Trial Court.

2. In view of the order passed in the above Civil Revision Petition, the Trial Court viz., Principal Family Court at Coimbatore, is directed to number the set aside Application and dispose of the same in accordance with law within a period of two months.

04.10.202

4
rkp