



C.R.P.Nos.3208 and 3213 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

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THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.3208 and 3213 of 2023
and C.M.P.No.19795 of 2023

Raja ... Petitioner in both CRPs

-Vs-

R.Brindha ... Respondent in both CRPs

Prayer in CRP 3208/2023: Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and final order dated 06.06.2023 in EP No.7 of 2022 in IA No.229 of 2018 in HMOP No.16 of 2017 on the file of Additional Principal Family Judge, Coimbatore.

Prayer in CRP 3213/2023: Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and final order dated 06.06.2023 in E.A.No.4 of 2023 in E.P No.7 of 2022 in IA No.229 of 2018 in HMOP No.16 of 2017 on the file of Additional Principal Family Judge, Coimbatore.

In both C.R.Ps

For Petitioner : Mr.V.Anandhamoorthy
For Respondent : Mr.M.Muruganantham
for Mr.T.Elumalai

COMMON ORDER

These two revisions arise at the instance of the husband, against whom a warrant of arrest has been issued by the learned Additional Principal Family Judge at Coimbatore.



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2. The petitioner is the husband and the respondent is the wife. The husband had initiated HMOP No.11 of 2012 before the learned Subordinate Judge at Sathyamangalam. The said proceeding was thereafter transferred to the file of Additional Principal Family Court at Coimbatore and renumbered as HMOP No.16 of 2017. In the said proceedings, the wife took out an application under Section 27 of the Hindu Marriage Act seeking return of jewels given to her by her parents at the time of marriage. The said application was allowed by the learned Additional Family Judge, Coimbatore. A challenge to the said order has also been unsuccessful.

3. Since the husband did not return the jewels, the wife initiated E.P.No.7 of 2022, seeking for his arrest. In the said proceeding, the husband was served, but he did not seriously contest the same. On account of that fact, on 01.12.2022 the Court issued a warrant of arrest. To set aside the ex parte order dated 01.12.2022 as well as to recall the warrant of arrest, the petitioner filed E.A.Nos.3 and 4 of 2023. The plea of the husband is that he was taking treatment for jaundice at Palakkad and therefore he could not follow up on the execution petition. Hence, he sought to set aside the ex parte order.

4. The learned Judge issued notice to the respondent wife and received a counter from her. The wife would state that the attempt of the husband is only to prolong the litigation by filing a false and vexatious petition. She would plead that



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she has been admitted in hospital due to high Blood Pressure and connected ailments and is still undergoing treatment for the same. She would further point out that the application had been filed with a delay and since the petition to set aside the exparte order was not accompanied with a condone delay petition in terms of Order XXI Rule 106(ii) of CPC, the same is not maintainable.

5. The learned Judge came to a conclusion that since the husband has not furnished any details with respect to his illness, since he failed to appear on 04.11.2022 and 17.11.2022, the Court was constrained to pass an exparte order on 01.12.2022. Since the petition was filed after 20 days ie., 05.01.2023 without an application to condone the delay, he dismissed the same, against which the present revisions.

6. Heard Mr.V.Anandhamoorthy for the petitioner and Mr.Muruganantham for the respondent.

7. Mr.Anandhamoorthy would submit that the husband has not been in a position to attend the Court on account of the fact that he was sick on 01.12.2022 and was taking treatment at Palakkad. Mr.Muruganantham stoutly denying the same, would state that the only intention of the husband is to drag on the matter and denying the benefit of the order of return of jewels to the respondent wife.



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8. Heard the submissions of both sides and have gone through the materials placed on record.

9. The relationship of the parties is not in dispute. It is also not in dispute that the order passed in I.A.No.229 of 2018 was unsuccessfully challenged before this Court in C.R.P.No.3176 of 2022, which had been dismissed on 01.03.2023. In other words, the order on the basis of which the execution petition has been filed has attained finality. Therefore, the petitioner husband does not have any option other than to return the jewels or make good the loss suffered by the wife.

10. Yet, I have to take note of the fact that while taking native treatment, the issue of getting medical certificate does not arise. Apart from that, delay in this matter is hardly about a week. The learned Judge could have called upon the party to file an application to condone the delay of 7 or 8 days and could have passed an order in the same instead of dismissing the said petition.

11. It is here that I have to take note of the wife's objections that though maintenance petition had been filed as early as in 2012, till date the husband has not paid even a single penny towards maintenance to the wife or to the son. He would plead that it is the respondent's parents who are taking care of the wife and her child.



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12. Taking the overall circumstances into consideration, I feel if stringent condition is imposed on the civil revision petitioner, then the exparte order can be set aside. Accordingly, the order dated 06.06.2023 in E.A.No.4 of 2023 and E.A.No.3 of 2023 is set aside on the condition that the civil revision petitioner shall **pay** a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the respondent wife as costs for allowing the said applications. The costs must be paid on or before **16.08.2024**. In case costs are not paid within the time granted by this Court, the civil revision petitions will stand automatically dismissed without any further reference to this Court. It is made clear that no application for extension of time will be entertained by this Court. The benefit of setting aside the order dated 06.06.2023 is only on account of the fact that the husband pleads he was sick and could not be present before the Court on 01.12.2022. With the above condition, the Civil Revision Petitions are allowed.

13. At this stage, Mr.Anandhamoorthy would submit that the wife is not permitting the husband to visit the child. Mr.Muruganantham would submit it is the petitioner husband who is not eliciting any interest in seeing the child and on her part, the wife is always willing to permit the husband to visit the child.



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14. In the light of the submissions made by Mr.Anandhamoorthy as well as Mr.Muruganantham and taking into consideration that the child should not grow up without knowing who his father is, I feel if the husband is permitted to visit the child at the residence of the respondent wife every Sunday between 10.00 a.m. to 12.00 p.m., it will serve the interest of justice. I also take note that the divorce proceedings, maintenance proceedings and guardianship proceedings are pending for more than a decade. I am certain that the learned Additional Principal Judge at Coimbatore will take into consideration the long pendency of the matter and take all such steps that are necessary to dispose of the same at an early date.

01.08.2024

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Index : Yes/No
Neutral Citation : Yes/No
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To

The Additional Principal Family Judge,
Coimbatore.



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V. LAKSHMINARAYANAN, J.

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C.R.P. Nos.3206, 3210
and 3211 of 2023

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