



*C.R.P.(NPD)No.4356 of 2022*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 03.04.2024**

CORAM

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**C.R.P.(NPD)No.4356 of 2022**

**and**

**C.M.P.No.22915 of 2022**

Mohammed Humayun

.. Petitioner

Vs.

1.Sajeena

2.Minor.Rida Fathima

3.Minor.Afaina Mariyam

.. Respondents

**Prayer** : The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 26.10.2022 made in I.A.No.5030 of 2018 in O.P.No.4613 of 2014 on the file of the III Additional Principal Family Court at Chennai.

For Petitioner : Mr.D.Gopinathan

For R1 : Mr.S.Vinoth Kumar

For RR2 & 3 : Minors, represented by R1



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**ORDER**

The present Civil Revision Petition arises against the order of the III Additional Principal Family Court at Chennai. An application was filed in I.A.No.5030 of 2018 in O.P.No.4613 of 2014 to condone the delay of 1199 days in filing the application to set aside the *ex parte* decree passed in O.P.No.4613 of 2014, dated 17.04.2015.

2. O.P.No.4613 of 2014 was filed by the civil revision petitioner seeking the custody of his two daughters by name Rida Fathima and Afaina Mariyam. Admittedly, the children are in the custody of the mother.

3. According to the husband/civil revision petitioner, though the 1<sup>st</sup> respondent was put on notice, she did not appear before the Court and therefore, the Family Court had no other option but to proceed and pass an order granting him custody of the two girl children.

4. When he took out an application for execution of the order dated 17.04.2015, the wife came forward with an application to set aside the *ex parte* decree. The ground she pleaded was that she was never put on notice of the proceedings before the Family Court. This reason was found to be



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convincing by the learned III Additional Principal Family Court at Chennai.

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5. The reason that the learned Judge gave was that the address to which the summons were taken in the O.P.No.4613 of 2014 is different from the address in which the petitioner was residing. Therefore, exercising its discretion, he condoned the delay on payment of cost of Rs.2,000/- (Rupees Two Thousand only). This order is put on revision before me.

6. I heard Mr.D.Gopinathan for the petitioner and Mr.S.Vinoth Kumar for the respondents.

7. It has been settled by the Supreme Court that where the trial Court has exercised its discretion to condone the delay, unless and until the same is capricious or arbitrary, the Court must not interfere with the same in its revisional powers. See, ***N.Balakrishnan v. M.Krishnamurthy [(1998) 7 SCC 123]***.

8. Apart from that, I find from the impugned order as well as from the



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records placed therein, the address of the petitioner was given by the husband as follows :

*“ Gowreesam House, Venpakal, Kamukincode  
Post, Trivandrum, Kerala ”*

However, according to the wife, she was residing at :

*“ T.C.48/593(10), Sivanandhanam, Kotturpuram  
Road, Ampalathura, Trivandapuram ”*

9. The summons were not taken to the address in which the 1<sup>st</sup> respondent was residing. Therefore, the decree that had been passed in the O.P.No.4613 of 2014 on 17.04.2015 was without notice to the 1<sup>st</sup> respondent. Hence, the trial Court has rightly exercised the discretion in favour of the wife and had condoned the delay.

10. In the light of the above discussion, I do not find any reason to interfere with the order impugned before me.

11. Mr.D.Gopinathan would submit that pending the proceedings, the



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husband was permitted to visit the children and the same may be continued even after the disposal of the revision. As the parties have agreed that the father will enjoy rights of visitation, the said arrangement shall be continued. Ofcourse, the wife can always bring to the notice of the Court, in case, the husband misuses his right of visitation and seek for any variation of the order.

12. With the above observations, the Civil Revision Petition stands dismissed. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

**03.04.2024**

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

The III Additional Principal Family Court,  
Chennai



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**V. LAKSHMINARAYANAN, J.**

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