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CRP.No.215 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.215 of 2024

R.Menaka

.. Petitioner

Versus

A.Ramakrishnan

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 29.08.2023 passed in I.A.No.192 of 2022 in HMOP.No.383 of 2016 on the file of learned Subordinate Judge, Poonamallee.

For Petitioner	:	Mr.A.Thanigaivel
For Respondent	:	Mr.G.Anbuezhayan

ORDER

Challenge has been made to the order dismissing the application filed to condone the delay of 1370 days in setting aside the exparte decree dated 11.04.2018 in divorce proceedings.



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2. The respondent has filed an application for divorce. The said application has been decreed and dissolution of marriage was granted on 11.04.2018. An application has been taken out by the wife/revision petitioner for condoning the delay in setting aside the exparte decree on the ground that the notice has not been served on her. In the cause title of the judgment, husband's address was shown and conveniently the petitioner was made exparte, the petitioner is not residing in the address shown in the petition. Despite the same, the husband's address is shown and exparte order has been obtained. Counter has been filed by the respondent disputing such contentions on the ground that each days delay has not been explained. The Trial Court had dismissed the application. Hence, this instant petition.

3. The learned counsel for the petitioner submitted that the petitioner's address is shown as that of her husband's address and obtained the exparte decree. Whereas, the learned counsel for the respondent submitted that notice has been served to the other address, where, the revision petitioner



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was residing, however, the same has not been received. Hence, the Order of the Trial Court is well and does not require interference from this Court.

4. Heard both sides and perused the materials placed on record. The Trial Court, in fact, has recorded the fact that in the petition, the petitioner's husband residence has been shown as residence of wife, in fact, the wife/petitioner was not residing in the said address at the relevant point of time with the husband. Thereafter, made to appear as if the summons was refused. It is relevant to note that another notice was also served to some other address, which was also returned as “unclaimed”. Thereafter, she was set exparte. The very conduct of the husband giving different address and making wife exparte indicate that such tactics of getting exparte decree had been adopted only in order to get rid of his wife. The parties are senior citizens. When it is established that notice has not been served, proper opportunity has to be given to the parties to agitate their rights on merits.

5. It is to be noted that while considering the application under Section 5 of the Limitation Act, the Court has to keep in mind the expression "sufficient cause" must receive a liberal construction so as to advance



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substantial justice and generally delays be condoned in the interest of justice and particularly when the explanatory reasons has been given. In the absence of anything showing malafide or deliberate delay as a dilatory tactics, the Court should lean in favour of the substantial justice by condoning the delay. Though the delay sought to be condoned appears huge, as the notice has not been properly served and exparte decree has been obtained conveniently, this Court is of the view that the petitioner has sufficient cause to condone such huge delay. Hence, the order dismissing the application in I.A.No.192 of 2022 filed to condone the delay in filing the application to set aside the exparte order is hereby set aside.

6. Accordingly, this revision stands allowed. No costs. The learned Subordinate Judge, Poonamallee shall proceed with the main matter and dispose of the same within a period of six months from the date of receipt of a copy of this Order.

06.12.2024

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Index : Yes/No

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To
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The Subordinate Judge
Subordinate Court, Poonamallee

N.SATHISH KUMAR, J.,



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