



C.R.P.(MD)No.335 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.02.2024

PRONOUNCED ON: 05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.335 of 2019

Logeswari : Petitioner/Petitioner/Respondent

Vs.

Sathishkumar : Respondent/Respondent/Petitioner

PRAYER:- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the order and decree made in I.A.No.189 of 2018 in H.M.O.P.No.111 of 2016, dated 24.09.2018, on the file of the Sub Court, Ramanathapuram.

For Petitioner : Mr.V.S.Kishok Kumar

For Respondent : Mr.D.Balamuruga Pandi



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ORDER

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The Civil Revision Petition is directed against the order passed in I.A.No.189 of 2018 in H.M.O.P.No.111 of 2016, dated 24.09.2018, on the file of the Subordinate Court, Ramanathapuram, dismissing the petition filed under Section 5 of Limitation Act.

2. The revision petitioner is the respondent and the respondent as the petitioner has filed the original petition in H.M.O.P.No.111 of 2016 against the revision petitioner claiming divorce. Since the revision petitioner/respondent has not turned up for the hearing, she was called absent and set exparte on 17.03.2017 and subsequently an exparte order of divorce came to be passed on 11.07.2017. The revision petitioner has filed an application in I.A.No.189 of 2018 under Section 5 of the Limitation Act to condone the delay of 260 days in filing an application for setting aside the exparte order dated 17.03.2017. The respondent has filed a counter statement raising serious objections. The learned Subordinate Judge, after enquiry, has passed the impugned order, dismissing the petition. Aggrieved by the order of dismissal, the above revision came to be filed.



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3. The case of the revision petitioner / respondent in the affidavit filed in support of the petition filed under Section 5 of the Limitation Act is that the respondent in the main O.P., has shown her parents' house as her address, that since notice was not properly served on the revision petitioner, exparte order came to be passed 17.03.2017, that subsequently exparte order of divorce came to be passed on 11.07.2017 dissolving the marriage between her and the respondent solemnised on 25.06.2009, that the respondent has earlier filed a divorce petition in H.M.O.P.No.67 of 2013 and the same was already dismissed for default, that the revision petitioner has filed a petition in H.M.O.P.No.81 of 2013 seeking restitution of conjugal rights and since the respondent has not turned up, the decree for restitution of conjugal rights came to be passed, that the respondent without restoring the divorce petition which was dismissed for default and without setting aside the exparte order for restitution of conjugal rights passed in favour of the revision petitioner, has filed the divorce O.P., and that since the revision petitioner has come to know about the exparte order now only, she was constrained to file the above application to condone the delay of 260 days in filing the application for setting aside the exparte order.



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4. The defence of the respondent is that he has filed the divorce petition on 26.10.2016 and the same was pending on the file of the Subordinate Court, that though the summons was properly served on the revision petitioner, she has not chosen to enter into appearance and hence, she was called absent and set exparte and exparte order came to be passed on 11.07.2017, that the respondent has also filed a petition in G.W.O.P.No.15 of 2016 before the Principal District Court, Ramanathapuram seeking custody of their minor son and the same was also ordered on 09.05.2017, that the respondent, to take care of his minor son and aged parents, married one Murugeswari, D/o Nalluran on 19.03.2018, that the revision petitioner has filed the above petition to take revenge on the respondent, that the respondent in his main petition for divorce has mentioned about the earlier case particulars and he has not suppressed anything, that the respondent has mentioned the address of the revision petitioner, which was shown in the other cases, that the revision petitioner has fraudulently alleged that the proper notice was not served on her and that therefore, the petition is liable to be dismissed.



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5. Admittedly, the marriage between the petitioner and the respondent was solemnised on 25.06.2009 and due to their wedlock, they were blessed with a son. It is evident from the records that the respondent has earlier filed a divorce petition in H.M.O.P.No.67 of 2013 and the revision petitioner has filed a petition in H.M.O.P.No.81 of 2017 seeking restitution of conjugal rights and that the divorce petition in H.M.O.P.No.67 of 2013 was ordered to be dismissed for default and in H.M.O.P.No.81 of 2017 exparte order for restitution of conjugal rights came to be passed.

6. It is pertinent to note that the respondent in the petition for divorce filed in H.M.O.P.No.111 of 2016 has specifically averred about the earlier matrimonial proceedings. Moreover, the respondent has further stated in the main O.P., that after filing of the above two petitions, there was a panchayat and in the panchayat, the revision petitioner, after accepting her mistakes, has agreed to live with the respondent and on that basis an affidavit came to be executed on 04.11.2014, that the revision petitioner after that had started to live with the respondent and within 2 days, she left the matrimonial home by alleging that she has to see her



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ailing father and that she has not returned thereafter. Whether the above allegations of the respondent are true or not cannot be gone into at this stage. But the fact remains that the respondent has specifically mentioned about the earlier proceedings and the reason for filing the present petition for divorce.

7. The main contention of the revision petitioner is that notice was properly served on her in the main O.P. But as rightly observed by the learned trial Judge, the address shown by the revision petitioner in the affidavits filed in support of the petition under Section 5 of the Limitation Act and another petition filed under Order 9 Rule 7 C.P.C., was shown as respondent's address in the main O.P., in H.M.O.P.No.111 of 2016. The learned trial Judge has further observed that notice sent to the revision petitioner through the Court was affixed for the reason that she had gone to Chennai and then to Karaikudi and that subsequently substitute service was ordered and the same was complied with.

8. As rightly contended by the learned Counsel for the respondent, it is not the specific case of the revision petitioner that the address shown in the main O.P., is not her address or that the address shown is fake.



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Except showing that notice was not properly served on her as the address of the parental house of the petitioner was shown in the address for service, she has not elaborated anything further. The petitioner has also not produced any iota of materials to show that the respondent had managed to get the notices returned as unserved and obtained order of substitute service fraudulently. Hence, the contention of the revision petitioner that notice was not properly served on her is absolutely devoid of substance and the same is liable for rejection.

9. It is pertinent to note that after the decree of divorce granted on 11.07.2017, the respondent had married one Murugeswari on 19.03.2018, after the lapse of 7 months. Before entering into further discussion, it is necessary to refer Section 15 of the Hindu Marriage Act:

“15. Divorced persons when may marry again: When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.”



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It is pertinent to note that there was a proviso to Section 15 prior to the amendment and the same came to be omitted by the amending Act of 1976. The proviso to the Section which was omitted by the amending Act 1976 laid down that it shall not be lawful for the respective parties to marry again, unless, at the date of such marriage at least one year has elapsed from the date of decree in the Court of the first instance. Hence the result of deleting the proviso is that the parties whose marriage is dissolved by a decree of divorce can contract marriage soon thereafter, but only after the period of appeal has expired. It is clear that the waiting period for remarriage has been reduced by the amendment which would only reveal the intention of the legis to settle the rights of the husband and wife after divorce permanently at the shortest period of time.

10. In the case of ***Surendra Kumar vs. Krian Devi reported in AIR 1997 Rajasthan 63***, the Rajasthan High Court has held that when there is a valid remarriage and when the right of the second wife intervenes, the petition to set aside the exparte decree cannot be allowed and the relevant portions are extracted hereunder:



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“6. It has not been disputed before me that after passing of the ex parte decree in favour of the petitioner by the Dist. Judge on 11-8-1992, the petitioner contracted a second marriage after four months. In such a situation, the important question that arises for determination is whether the ex parte decree can be set aside?

*7. This question arose in [Harjeet Singh v. Guddi's case](#), (1987) 1 Rajasthan LR 520, and it was held by this Court that when second valid marriage is contracted, it is in the interest of justice to dismiss the application for setting aside the ex parte decree for divorce. Again the same question was considered in *Smt. Shimla Devi v. V. Kiran Kumar's case*, (1994) 3 WLC 519, and it was held that by contracting a second marriage, the interest of second wife intervenes.”*

11. A learned Judge of this Court, by referring to the decision of the Rajasthan High Court, in the case of ***A.Raja Sundari Vs. Suresh Kumar*** reported in ***AIR 2016 MADRAS 160***, has observed that the dismissal of the application to condone the delay is an invited injury by the revision petitioner herself, and, unfortunately the revision petitioner has landed herself in such a position on account of her own conduct of negligence. The above observation is squarely applicable to the case on hand also.



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12. As already pointed out, the respondent had entered into second marriage 7 months after the dissolving of the first marriage. The learned trial Judge has rightly referred the judgment of the Hon'ble Supreme Court in the case of ***Pasupuleti Venkateswarlu Vs. The Motor & General Traders*** reported in ***AIR 1975 SC 1409*** for the proposition that all the proceedings of the Courts can and must take conscious cognizance of events and developments subsequent to the institution of the proceedings provided the rules of fairness to both the sides are scrupulously obeyed.

13. Considering the above facts and circumstances and taking note of the fact that the right of the second wife of the respondent had also intervened and also the fact that the petitioner has not assigned any valid or acceptable reason or cause for the inordinate delay of 260 days, the impugned order dismissing the petition, cannot be found fault with.

14. Since the petition under Section 5 of the Limitation Act was dismissed, consequently the petition filed for setting aside the exparte decree has to be rejected. But in the case on hand, as already pointed out,



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the revision petitioner has filed an application under Order 9 Rule 7 C.P.c., seeking orders to set aside the exparte order dated 17.03.2017, the date on which, she was set exparte and not for setting exparte decree passed on 11.07.2017. Even in the petition filed under Section 5 of the Limitation Act, she has prayed to condone the delay of 260 days in filing the petition for setting aside the exparte order dated 17.03.2017 and as such, the prayer itself cannot be sustained. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

15. In the result, the Civil Revision Petition is dismissed, confirming the order dated 24.09.2018, passed in I.A.No.189 of 2018 in H.M.O.P.No.111 of 2016, on the file of the Sub Court, Ramanathapuram. There shall be no order as to costs.

05.04.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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1. The Subordinate Court, Ramanathapuram.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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