



Crl.RC.No.776 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.776 of 2023 and
Crl.M.P.No.6008 of 2023

K.R.Dhanasekaran

... Petitioner

Vs.

Swapna

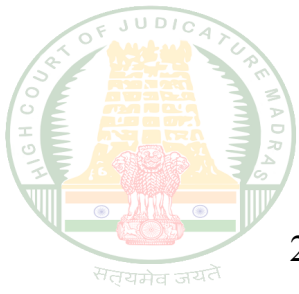
... Respondent

Prayer: Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. to call for the records relating to the order dated 17.12.2022 in Crl.M.P.No.318 of 2021 in M.C.No.17 of 2018 on the file of the Family Court, Krishnagiri, and set aside the same.

For Petitioner	: Mrs.AL.Ganthimathi Senior Advocate for Mr.L.Palanimuthu
For Respondent	: Mr.P.M.Jayachandran

ORDER

This Criminal Revision Case has been filed by the petitioner to set aside the order dated 17.12.2022 made in Crl.M.P.No.318 of 2021 in M.C.No.17 of 2019 on the file of the Family Court, Krishnagiri.

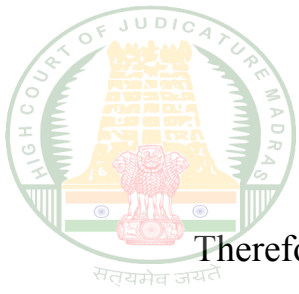


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2. The case of the petitioner is that the respondent/daughter of the petitioner, filed a maintenance case in M.C.No.17 of 2019 before the Family Court, Krishnagiri, invoking Section 125 Cr.P.C. Since the petitioner did not appear before the Court, ex-parte order was passed against the petitioner on 15.12.2020 directing the petitioner to pay a sum of Rs.7,000/- towards maintenance and medical expenses to the respondent. Thereafter, the petitioner filed a petition in C.M.P.No.318 of 2021 before the Family Court to condone the delay of 151 days in filing the petition to set aside the ex-parte order. The said petition was dismissed by order dated 17.12.2022. Aggrieved by the same, the present revision is filed.

3. The learned Senior Counsel appearing for the petitioner submitted that in the original maintenance petition, the name of the petitioner was wrongly mentioned and therefore, no service was effected. Therefore, they have amended the name of the petitioner, however the summon was served only through substituted service and that the summon was not served in person.



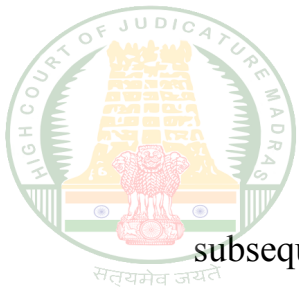
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Therefore, the petitioner was not aware of the pendency of the proceedings and

later, he was served with the execution order. Subsequently, they approached the Court to set aside the ex-parte order. By that time, there was a delay in filing the petition to set aside the ex-parte order. Hence, the petitioner filed a petition in Crl.M.P.No.318 of 2021 before the Family Court seeking to condone the delay of 151 days in filing the petition to set aside the ex-parte order, whereas, the learned Judge, Family Court failed to consider the fact the summon was not served on the petitioner and the ex-parte order was passed only on service of substituted service and without giving opportunity to the petitioner to defend his case, dismissed the petition on technical ground which caused much prejudice to the petitioner. Therefore, the present revision is filed.

4. Heard both sides and perused the materials available on record.

5. It is seen from the records that originally the name of the petitioner has been mentioned wrongly and subsequently, the same has been amended and notice has been served through substituted service and not in person and



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subsequently, the ex-parte order has been passed against the petitioner.

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Thereafter, the petitioner has filed a petition to condone the delay of 151 days in filing the petition to set aside the ex-parte order the same has been dismissed. However, it is not the case of the petitioner that the address was wrongly mentioned. The respondent is none other than the daughter of the petitioner and she filed the maintenance case against the petitioner seeking maintenance. Though it is an ex-parte order, it is not the case of the petitioner that the petitioner is paying the maintenance to the respondent and the respondent is staying with him or she is a woman of means.

6. However, in order to give an opportunity to the petitioner as well as considering the nature of litigation and the relationship of the parties, this Court is inclined to allow this Revision Petition subject to certain condition.

7. Accordingly, this Criminal Revision Case is allowed and the delay is condoned on condition that the petitioner shall deposit the 50% of the arrears of maintenance amount before the Family Court in M.C.No.17 of 2019 within



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a period of 30 days from the date of receipt of a copy of this order.

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8. On such deposit is being made, the Judge, Family Court is directed to take the petition filed by the petitioner to set aside the ex-parte order, on file and decide the matter on merits.

9. Further, it is open to the parties to approach the mediation center attached to the Family Court or District Court and settle the matter within a reasonable time failing which, the Family Court shall deal with the matter and decide the case on merits and in accordance with law.

10. Consequently, the connected Miscellaneous Petition is closed.

14.03.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

The Family Court,
Krishnagiri

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