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CRP No.1336 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :03.07.2025

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

C.R.P.No.1336 of 2024 and CMP No.7114 of 2024

S.Pushpalatha

... Petitioner

VS

K.Sureshkumar

.. Respondent

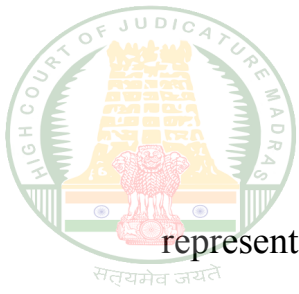
Revision filed under Article 227 of the Constitution of India to set aside the order and decretal order passed in I.A.No.1 of 2022 in I.A.No.103 of 2018 in FCOP No.379 of 2016 on the file of Family Court, Salem dated 11.12.2023.

For Petitioner : Ms.R.Sripriya

For Respondent : No appearance

ORDER

Despite giving several opportunities to the respondent to appear and contest the revision, there is no representation on the side of the respondent. In fact, the respondent engaged a counsel to represent him as well. Today, the matter has been listed under the caption “ for orders” and even today, there is no



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representation on the side of the respondent. I have proceeded to hear the learned counsel for the petitioner.

2. Learned counsel for the petitioner would submit that the petitioner had taken out an application under Section 27 of the Hindu Marriages Act, 1955 for return of jewels and a petition in FCOP No.379 of 2016 was filed by the respondent/husband for restitution of conjugal rights. Admittedly, the same has been dismissed as withdrawn by the respondent/husband and he has not chosen to contest the divorce proceedings initiated by the petitioner/wife. The Family Court has proceeded to pass an order in the application filed under Section 27 of Hindu Marriages Act, 1955 taken out in I.A.No.103 of 2018, filed by the revision petitioner/wife for return of jewels. Alleging that the respondent/husband had no knowledge of the said application and that he got knowledge only in June 2022, has opposed the application seeking condonation of delay of 1473 days in filing the application to set aside the order passed in I.A.No.103 of 2018. Therefore, the learned counsel for the petitioner would state that there is no infirmity in the order passed by the Family Court in I.A.No.103 of 2018 in view of the respondent himself choosing to withdraw the petition filed for restitution of conjugal rights. Learned counsel would bring to my notice even in the affidavit filed in support of the application to condone the delay, the petitioner

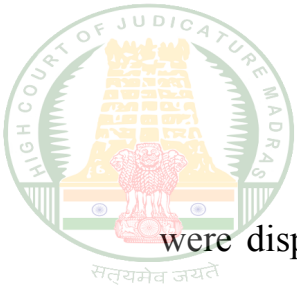


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claims that the respondent/husband came to know about the order passed in I.A.No.103 of 2018 in June 2022 itself. However, pointing out to the date of filing of the application, learned counsel would state that even thereafter, the application was not filed within 30 days. The trial Court ought not to have entertained the application. In any event, notices were, admittedly, even according to the respondents, served on respondent's mother at Salem and the respondent/husband cannot plead ignore of the application taken out. Learned counsel also pointed out that the respondent has subsequently attended the hearings before the Court and only for the purposes of the application, false averments have been made as if no notice was served on him and the he came to know about the order only in June 2022.

3. Despite the application being strongly resisted by the revision petitioner, the Family Court, Salem has chosen to allow the application on the ground of sympathy and also holding that since FCOP No.379 of 2016, filed by the respondent/husband was withdrawn without any finding regarding Sridhana articles, an opportunity should be granted to the respondent/husband to establish the same.

4. In fact, I find that I.A.No.103 of 2018 as well as FCOP No.379 of 2016



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were disposed of on 13.11.2018. By withdrawing FCOP No.379 of 2016, the

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respondent/husband has virtually given up his right to establish the averments regarding return of jewels. Further, when both the matters were disposed of on the same day before the Family Court, Salem, it is wholly unacceptable to contend that the respondent was not aware of even filing of application in I.A.No.103 of 2018. The Family Court misdirected itself in condoning the delay on the ground of sympathy. In fact, the Family Court ought to have seen that the respondent has not even complied with the order granting maintenance and there is huge arrears of Rs.30,00,000/- as on date. Under such circumstances, the respondent/husband was certainly not entitled to any indulgence whatsoever, much less sympathy as before.

5. The delay has not been properly explained and as rightly pointed out by the learned counsel for the petitioner, even on the strength of the affidavit filed in support of application to condone the delay, the application has not been taken out within 30 days even from the self serving statement regarding date of knowledge.

6. In view of the above, the order passed in I.A.No.1 of 2022 in I.A.No.103 of 2018 in FCOP No.379 of 2016 is set aside and the civil revision



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petition is allowed. No costs. Consequently, connected miscellaneous petition is

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03.07.2025

Index: Yes/No

Website:yes/no

Speaking Order/Non-speaking Order

sr

To

The Family Court, Salem



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P.B.BALAJI.,J.

Sr

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