



C.R.P. No. 3302 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2022

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. No. 3302 of 2023

and

C.M.P. No. 20408 of 2023

Umavathy

... Petitioner

Vs.

D. Vijayakumar

... Respondent

Prayer: Criminal Original Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 20.01.2023 made in F.C.I.A. No. 3 of 2022 in F.C.O.P. No. 118 of 2020 on the file of the Family Court at Chengalpet.

For Petitioner : Mr. G. Muniratnam

For Respondent : Mr. D.R. Arun Kumar

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 20.01.2023 made in F.C.I.A. No. 3 of 2022 in F.C.O.P. No. 118 of 2020 whereby, the Family Court at Chengalpet had dismissed the



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petition seeking to condone the delay of 44 days in setting aside the exparte decree passed on 02.03.2021 in F.C.O.P. No. 118 of 2020.

2. The facts of the case is that, the respondent-husband has filed F.C.O.P. No. 118 of 2020 against the petitioner-wife before the Family Court, Chengalpet under Section 13(1) (i-a) & (i-b) of The Hindu Marriage Act, 1955, on the ground of cruelty and desertion. The case was posted for appearance of the wife on 02.03.2021. The Court finding that the wife was served with sufficient notice was pleased to set her exparte on 02.03.2021 and on the same day, an exparte decree came to be passed. The wife had filed F.C.I.A. No. 3 of 2022 on 16.12.2021 seeking to set aside the ex parte decree with an application to condone the delay of 44 days in filing the petition. The Family Court finding that the petitioner-wife had willfully avoided appearing before the Court after sufficient service of notice had dismissed the application. Against which, the present Civil Revision Petition has been filed.

3. Learned counsel for the petitioner would submit that the petitioner-wife was residing at Bangalore along with the child and the proceedings had happened during the Covid pandemic period. Though the counsel for the



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husband had informed the wife through WhatsApp communication about the date of hearing, the petitioner was unable to travel from Bangalore on account of Covid restrictions and further, she was also affected with Covid and thereby, she was unable to file the application seeking to set aside the exparte decree within 30 days and there was a delay of 44 days.

4. Learned counsel for the petitioner further submitted that the wife was also mentally disturbed on account of the proceedings and thereby the delay had occurred and the delay in filing the petition seeking to set aside the exparte decree is neither wilful nor wanton. The wife has got a good case on merits and have a girl child and if the exparte order is not set aside, she will be put to hardship and further submits that the revision may be allowed on fixation of terms.

5. Per contra, Mr. D.R. Arun Kumar, the learned counsel appearing for the respondent-husband would submit that the trial Court rightly finding that the wife had willfully not appeared before the Court and that she had not showed sufficient cause seeking to condone the delay had dismissed the application and hence, he vehemently opposed for allowing this revision.



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6. Heard and perused the materials available on record.

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7. The F.C.O.P. No. 118 of 2020 had been filed on 31.08.2020 during peak Covid pandemic. Though there seems to be some communication between the counsel for the husband and the respondent-wife, this Court also takes note of the fact that there were travel restrictions between Bangalore and Chengalpet and thereby, she was unable to appear before the Court. Further it is a family matter, and delay is only 44 days. The family Court could have taken into consideration all these aspects and condoned the delay, whereas the family Court had dismissed the application.

8. The parties are present before this Court. Taking into consideration the above facts, the order passed in F.C.I.A. No. 3 of 2022 in F.C.O.P. No. 118 of 2020 on the file of Family Court at Chengalpet is set aside and the matter is remitted back to the Family Court, Chengalpet for hearing on merits.

9. The parties are directed to appear before the Family Court, Chengalpet on 27.03.2025 and the Family Court shall take every endeavor to dispose the F.C.O.P. No. 118 of 2020 as expeditiously as possible after offering sufficient opportunity to both parties.



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WEB COPY 10. This Civil Revision Petition is disposed of with the above direction. Consequently, connected miscellaneous petition is closed. No costs.

27.02.2025

Index: Yes/No

Neutral Citation: Yes/No

AT

To

The Family Court, Chengalpet.



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A. D. JAGADISH CHANDIRA, J.

AT

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