



C.R.P.No.2680 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04..07..2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.2680 of 2025

and

C.M.P.No.15124 of 2025

Sivasankari

.... Petitioner

-Versus-

Sankaranarayanan

..... Respondent

Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the order and decretal order dated 10.03.2025 made in I.A.No.1 of 2024 in H.M.O.P.No.203 of 2020 on the file of the learned Subordinate Judge at Poonamallee.

For Petitioner : Mr.M.Ashwin Kumar

For Respondent : Mr.I.Harikrishnan

ORDER

This Civil Revision Petition is filed by the petitioner-wife challenging the order dated 10.03.2025 made in I.A.No.1 of 2024 in H.M.O.P.No.203 of 2020 by the learned Subordinate Judge, Poonamallee, dismissing her application filed under under Section 5 of the Limitation Act, 1963, to condone



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the delay of 952 days in filing the petition under Order IX Rule 13 of the Code of Civil Procedure, 1908, to set aside the ex parte decree of divorce dated 08.07.2001 granted in favour of the respondent-husband.

2. The revision petitioner is the wife and the respondent is the husband.

3. The marriage between the parties was solemnised on 14.09.2016 at Thirukadaiyur Abirami Amman Sannathi, Amirthakadeswarar Thirukovil, Thirukkadaiyur as per Hindu rites and customs. The respondent-husband filed a petition seeking dissolution of marriage on the ground of alleged mental cruelty due to the mental illness of the petitioner-wife. The respondent-husband pleaded that at the time of marriage, he was not aware of the mental illness of the petitioner-wife. Even prior to the marriage the petitioner-wife has been suffering from such mental illness. That petition was decreed ex parte on 08.07.2021.

4. In the mean time, the petitioner-wife filed an original petition in O.P. under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. The petitioner-wife stated that when the respondent-husband entered appearance in her petition only she came to know of the filing of the petition for divorce by the respondent-husband on the ground of cruelty alleging that she has been suffering from mental illness and of the ex parte decree of



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divorce obtained by the respondent-husband on 08.07.2021. The petitioner-

wife has now sought to set aside the said decree on the ground of non-service of proper notice in the original proceedings. It is her case that she was not served with court summons in the manner prescribed by law and that she had only received some white papers without any official seal or indication of court process. On consulting her counsel, she was advised that it may have been an attempt by her husband to obtain an ex parte decree fraudulently.

5. This court heard the learned counsel for the petitioner-wife and the respondent-husband.

6. The learned counsel for the petitioner-wife submitted that the learned Subordinate Judge erred in refusing to condone the delay of 952 days in filing the petition to set aside the ex parte decree of divorce. It was contended that the petitioner was not served with proper notice, and that she had only received an envelope containing blank white papers during the COVID-19 lockdown period. On legal advice, she filed a petition for restitution of conjugal rights in HMOP No.131 of 2021 before the learned Subordianate Judge, Cuddalore. The respondent-husband appeared and filed a counter in 2023, revealing for the first time that a divorce decree had already been obtained ex parte.

7. The learned counsel for the petitioner-wife further submitted that the



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delay was not willful or wanton, but due to lack of knowledge of the decree, misguidance by her counsel at Poonamallee. The learned counsel pointed out that mere illness does not amount to mental cruelty, and such a ground must be established through legally admissible medical evidence. In the absence of such evidence, the petitioner should have been afforded an opportunity to contest the claim on merits.

8. On the other hand, the learned counsel for the respondent-husband contended that the petitioner-wife was duly served with notice, and the delay of 952 days in filing the present application is both inordinate and wholly unexplained. The allegation that she had received only blank papers is vague, unsubstantiated, and lacks credibility. It was further contended that the respondent-husband would suffer serious prejudice if the ex parte decree of divorce, granted on 08.07.2021 after following due process of law, is now set aside at this belated stage.

9. This Court has carefully considered the rival submissions made by both parties and meticulously perused the materials available on record.

10. Upon consideration of the rival submissions and the records, this Court is of the view that the Subordinate Judge erred in dismissing the delay condonation petition without properly evaluating the cause for the delay. While

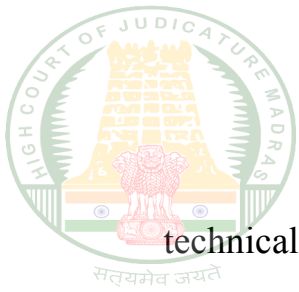


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the delay of 952 days is certainly substantial, the explanation offered by the petitioner that she was unaware of the ex parte decree and believed the relationship was ongoing is credible and supported by the fact that she filed a restitution petition as early as 2021, well before ex parte decree of divorce.

11. Further, it is brought to the attention of this court that the ex parte decree of divorce was granted on the ground of alleged mental illness of the wife, which allegedly amounted to mental cruelty. In this context, it is a well-established legal principle that mental illness or physical ailment, by itself, does not constitute mental cruelty, unless it is proved by adequate medical evidence and shown to have caused significant disruption to marital life. It is relevant to note that the parties are close relatives. Therefore, it is prima facie improbable to accept the contention that the respondent-husband was unaware of the petitioner-wife's alleged ailment prior to the marriage, particularly when the parties are closely related. Moreover, the petitioner-wife has had no opportunity to rebut such a serious allegation, as the decree of divorce was passed ex parte.

12. In a recent judgement in *Inder Singh v. The State of Madhya Pradesh [S.L.P.(C) No.6145 of 2024, dated 21.03.2025]*, the Hon'ble Supreme Court observed that while delay cannot be condoned in the absence of sufficient cause, the merits of a case should not be disregarded solely on the



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technical ground of limitation. The Court further emphasized that a liberal approach ought to be adopted in condoning delays, particularly where the bar of limitation threatens to override the cause of substantial justice. There can be no quarrel with the settled proposition that delay must be justified by sufficient cause; however, it is equally important to bear in mind that where the merits of the case warrant consideration, such adjudication should not be scuttled merely on the ground of limitation.

13. In matrimonial matters, where the outcomes have profound and lasting consequences on the lives of the parties, the Court is expected to adopt a humane and compassionate approach, particularly in cases where a party seeks relief on the ground that they were denied the opportunity to present their case.

14. No doubt, in the instant case, the length of delay is abnormal, however, upon consideration of the available records, this court sees that the delay was not deliberate. Although there may have been a lapse on the part of the petitioner-wife in not diligently pursuing the divorce proceedings despite having engaged an Advocate, such omission, by itself, cannot be construed as evidence of mental illness so as to stigmatize her on that ground. Allegations pertaining to mental health must be established by cogent and reliable evidence



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during trial. Allegations of such a serious nature must be substantiated through

proper evidence during the course of trial. It is a well-settled principle of law that in matters concerning condonation of delay, the length of the delay is immaterial so long as the applicant is able to demonstrate a 'sufficient cause' for the delay. The expression 'sufficient cause' must be interpreted in a liberal and justice-oriented manner to advance substantial justice. The primary concern of the court should be to ensure that meritorious matters are not dismissed at the threshold on technical grounds, and that an opportunity is afforded for cases to be decided on their merits.

15. Thus, this court is satisfied that the petitioner has shown sufficient cause for the delay, and that the ends of justice would be best served by affording the petitioner-wife an opportunity to contest the divorce proceedings. Above all, considering the serious allegations made in the petition, the divorce proceedings warrant examination on merits in accordance with law. Accordingly, this Court finds that the delay in filing the application to set aside the ex parte decree of divorce dated 08.07.2021 is liable to be condoned.

In the result, the Civil Revision Petition is allowed. The impugned order dismissing the application filed by the petitioner-wife under Section 5 of the Limitation Act to condone the delay of 952 days is set aside. The said



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application is allowed and the accompanying petition under Order IX Rule 13

WEB ~~CPC~~ is directed to be numbered, heard and disposed of as expeditiously as possible by passing a formal order allowing the same. Thereafter, the learned Subordinate Judge at Poonamallee will take up the original petition for divorce on file and proceed with the matter afresh and dispose of the same on merits and in accordance with law as expeditiously as possible, after affording due opportunity to both parties. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no

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To
1.The Subordinate Judge, Poonamalle, Tiruvallur District.



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N.SATHISH KUMAR.J.,

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