



C.R.P(MD)No.1377 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.02.2025**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1377 of 2022

Jeyasutha

... Petitioner/Petitioner/
Respondent

Vs.

Prasanna Venkatesh

... Respondent/Respondent/
Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.1 of 2020 in H.M.O.P.No.344 of 2015, dated 29.11.2021 on the file of the learned Principal Subordinate Judge, at Tiruchirapalli.

For Petitioner : Mr.D.Selvanayagam

For Respondent : No Appearance



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ORDER

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The present revision petition has been filed by the wife challenging the order passed by the Principal Sub Court, Tiruchirappalli wherein her application to condone the delay of 1224 days in filing an application to set aside the ex parte decree has been dismissed.

2. A perusal of the records reveal that the respondent/husband had filed H.M.O.P.No.344 of 2015 for divorce on the ground of cruelty. The petitioner had appeared on the first date of hearing on 16.11.2015 through her counsel and sought time to file counter. Since counter was not filed, she was set ex parte on 16.12.2016. An ex parte decree for divorce was passed on 05.04.2017.

3. To condone the delay in setting aside the ex parte decree, the wife had filed I.A.No.1 of 2020 on 09.10.2020 alleging that she came to know about the ex parte decree only when she visited the funeral of her father-in-law on 31.01.2020. The petitioner had contended that her



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counsel has not informed about the next date of hearing and therefore, she was not able to defend the said proceedings. The husband had filed his counter cotending that the wife had filed H.M.O.P.No.110 of 2017 before Family Court, Sivagangai for restitution of conjugal rights and the same was also dismissed for default. The wife had filed I.A.No.2 of 2020 before the said Court to condone the delay in filing an application to restore the said H.M.O.P.No.110 of 2017 assigning different reasons. However, the same was also dismissed by Family Court, Sivagangai.

4. The learned trial Judge had rejected the application to condone the delay on the ground that the petitioner has not explained the delay of 1224 days in filing an application to set aside the ex parte divorce decree. The said order is under challenge in the present revision petition.

5. According to the learned counsel appearing for the revision petitioner, the wife was residing along with the husband. At the time of filing of the H.M.O.P, by giving wrong address, the husband has managed to obtain an ex parte divorce decree. He further contended that



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the husband has not made any arrangements for payment of maintenance either to the wife or to the daughter. In such circumstances, he prayed for setting aside the order of the trial Court and to restore the H.M.O.P, so that the same could be disposed of on merits.

6. Even though the respondent was served and name printed in the cause list, he has not chosen to appear either in person or through counsel.

7. I have heard the learned counsel appearing for the revision petitioner and perused the material records.

8. As could be seen from the averments in I.A.No.1 of 2020, the petitioner has contended that her counsel has not informed about the dates of hearing and therefore, she was not able to file her counter in the divorce application. The petitioner has entered appearance through her counsel on 16.11.2015 and she has not filed her counter till 16.12.2016. Even as per the affidavit, the petitioner had knowledge about the ex parte



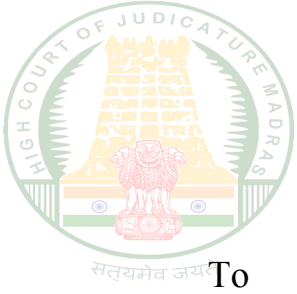
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divorce decree on 31.01.2020. However, she has filed the present application only on 09.10.2020 to condone the delay and the delay has not been explained by the revision petitioner. That apart, the petitioner's application for restitution of conjugal rights has been dismissed for default and she was not successful in restoring the said application also. In such circumstances, this Court does not find any reason to interfere in the order of the trial Court dismissing the condone delay application. It is needless to point out that the petitioner is always at liberty to seek maintenance from her husband for herself or for the child by way of independent proceedings.

9. In view of the above said deliberations, this Civil Revision Petition stands dismissed. No costs.

03.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
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- 1.The Principal Subordinate Judge,
Tiruchirapalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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