



C.R.P(MD)No.2317 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.01.2025
DELIVERED ON : 29.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.2317 of 2023

and

C.M.P(MD)No.11918 of 2023

Vasanthkumar

... Petitioner

Vs.

Mariya Selvam

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to quash all further proceedings of Domestic Violence Proceedings in I.A.No.4 of 2023 in I.D.O.P.No.42 of 2019 on the file of the learned III Additional District Court, Tirunelveli against this respondent and set aside the same as abuse of process of law by allowing this civil revision petition.

For Petitioner : Mr.Ananth C.Rajesh

For Respondent : No appearance



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ORDER

This Civil Revision Petition is filed against the order passed in I.A.No.4 of 2023 in I.D.O.P.No.42 of 2019, dated 16.06.2023 on the file of the learned III Additional District Judge, Tirunelveli.

2. According to the revision petitioner, the revision petitioner is the husband and the respondent is the wife and their marriage was solemnized on 28.06.2010 at CSI Cathedral Church at Narimedu, Madurai in the presence of elderly persons. Thereafter, they were residing at Madurai and out of the wedlock, a male child was born to them in April, 2011. Thereafter, on 11.12.2010, the respondent / wife went to her parents home at Tirunelveli and never returned back. The petitioner made several attempts to bring back the respondent / wife to the matrimonial home which also went in vain. Hence, the petitioner was constrained to file a petition for restitution of conjugal rights before the Principal District Judge, Madurai and the same was numbered as I.D.O.P.No.2 of 2012. Subsequently, it was transferred to I Additional Sub Court, Madurai. Further by the order of this Court vide Tr.C.M.P(MD)No.159 of 2013, dated 24.07.2014, the said I.D.O.P.No.2 of

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2012 was transferred to the Principal District Court, Tirunelveli and subsequently made over to I Additional District Court, Tirunelveli and renumbered as I.D.O.P.No.128 of 2015. On 14.12.2016, the above I.D.O.P was decreed in favour of the petitioner. Even after the said decree, the respondent / wife stayed back in Tuticorin and never returned to the matrimonial home. Hence, the petitioner filed I.D.O.P.No.42 of 2019 before the III Additional District Judge, Tirunelveli for divorce. In the said O.P, the respondent appeared and was dragging on the proceedings by not filing her counter statement. In spite of several opportunities, the respondent / wife failed to file her counter and therefore, she was set *ex parte* and *ex parte* decree was passed by the III Additional District Judge, Tirunelveli on 29.11.2019. Thereafter, on 05.01.2020, the petitioner contracted the second marriage. Knowing the above situation, the respondent / wife filed an application in I.A.No.4 of 2023 under Order IX, Rule 13 of the Civil Procedure Code, 1908 to set aside the *ex parte* decree, dated 29.11.2019 in order to harass the petitioner / husband. The said application, in spite of the objections made by the petitioner, was allowed by the Trial Court. Hence, he was constrained to file the present revision petition for setting aside the said order passed in I.A.No.4 of 2023.



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3. The learned Counsel appearing for the revision petitioner would submit that the act of the respondent / wife in filing the application for setting aside the *ex parte* decree is only with an intention to harass the petitioner herein. Since the revision petitioner is living happily with his newly wedded wife, by restoring the divorce petition in I.D.O.P.No.42 of 2019 and proceeding with the divorce petition would lead to grave hardship to the new life leading by the petitioner herein. Hence, prays for setting aside the order passed by the Trial Court.

4. Despite notice being served and name of the respondent being printed in the cause list, there is no representation on behalf of the respondent.

5. Heard the learned Counsel for the petitioner and perused the materials available on record.

6. On perusal of records, it is seen that the petitioner has first filed I.D.O.P.No.2 of 2012 for restitution of conjugal rights and the same was



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allowed on 14.12.2016. It is the specific case of the revision petitioner that despite several attempts made by the petitioner and his family, the respondent failed to return back to the matrimonial home and therefore, he was constrained to file the divorce petition in I.D.O.P.No.42 of 2019. In the said divorce petition, the respondent / wife failed to file her counter affidavit in spite of several opportunities and therefore, the Court was inclined to pass a decree of divorce in favour of the revision petitioner on 29.11.2019. Thereafter, he contracted the second marriage on 05.01.2020. At this juncture, the respondent / wife filed an application in I.A.No.4 of 2023 for setting aside the *ex parte* decree. The Trial Court failed to consider the averments made in the counter statement filed by the revision petitioner stating the attitude of the respondent / wife and about his second marriage, erroneously allowed the said application.

7. On perusal of records, it is seen that in I.D.O.P.No.42 of 2019, an *ex parte* decree of divorce was granted on 29.11.2019 and it is also not in dispute that the petitioner / husband contracted the second marriage on 05.01.2020. While so, the respondent filed an application in I.A.No.4 of 2023 for setting aside the *ex parte* decree. The said application was filed



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only in the year 2023. Moreover, it is evident that at every stage in divorce proceedings, the respondent / wife has exhibited supine indifference. When there is a duty to act with expedition at all stages and if she is guilty of unwarranted delay, she has to suffer the consequences. Section 15 of the Hindu Marriage Act, 1955 deals with right to remarry.

8. In the present case, by virtue of remarriage, the interest of second wife as intervene. The Trial Court ought to have taken cognizance of subsequent event while deciding the application for setting aside the *ex parte* decree providing fairness to both sides. When a marriage is dissolved by a decree of divorce and when the time for preferring the appeal is over, it shall be lawful for either party to marry again as contemplated under Section 15 of the Hindu Marriage Act, 1955. Therefore, the Trial Court erred in condoning the delay, that too when the revision petitioner got remarried subsequent to the passing of the *ex parte* divorce decree as early as on 29.11.2019.

9. For the foregoing reasons, this Court is of the considered view that the impugned order passed by the Trial Court is an erroneous one and it has



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to be set aside.

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10. In the result, the impugned order, dated 16.06.2023 passed by the III Additional District Judge, Tirunelveli in I.A.No.4 of 2023 in I.D.O.P.No. 42 of 2019 is hereby set aside and the civil revision petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

29.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The III Additional District Court,
Tirunelveli.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
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29.01.2025