

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),
VELLORE,VELLORE DISTRICT.

PRESENT: Tmt.P.REVATHY, M.A.,M.L.,
Additional District Judge(FTC),Vellore.

Dated this the 20th day of November 2023, Monday

I.A.No.3/2023 in
I.A.No.2/2022 in
HMCMA NO.19/2022

- - -

B.Saravana Kumar,
S/o.B.T.Balan

.. Petitioner/Respondent/Respondent

//Vs//

P.Sinduja,
W/o.Dr.B.Saravanakumar

...Respondent/Petitioner/Appellant.

This petition was coming before me on 16.11.2023 for final hearing in the presence of Thiru.P.G.Thiyagu and Thiru.C.Pritheevraj, Counsels for the Petitioner and the party appeared in person for the respondent and upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration, till this date this court delivered the following:-

ORDER

Petition filed by the petitioner U/s. 5 of Limitation Act to condone the delay of 81 days in filing the petition to set aside the exparte order dated 15.02.2023 in I.A.No.2/2022.

2.The averments of the affidavit as follows:-

The petitioner herein is the Respondent in the main petition. The respondent herein has filed the petition in I.A.No.2/2022 in HMCMA

No.19/2022 seeking a huge amount of compensation from this petitioner herein. On 15.02.2023 the case is posted for counter in I.A.No.2/2022, on that day he was not able to contact his counsel to file counter in the I.A., because of his father became unconscious and admitted in hospital due to increase in the diabetic level and treatment of hyper tension, inhaling problem. He is being on treatment and regular checkup was going on since his father had been taken open heart surgery in three years back. It takes a month for him to recover from this stage of diseases. In the mean time, the petitioner was set exparte for not filing counter in I.A.No.2/2022.

The Respondent herein filed a petition for execution before this court as E.P.No.48/2023. When he came to know about the Exparte order passed by this court against him in I.A.No.2/2022 in HMCMA No.19/2022, he immediately filed Copy Application on 05.04.2023. Thereafter, he contact his counsel and enquired about the status of the case and now he filed the condone the 81 days delay in filing the set aside petition. The non submission of counter is neither willful nor wanton but due to his parents health. On the other hand, if the exparte order dated 15.02.2023 is not set aside, he will be put to irreparable loss and hardship. Hence the petitioner filed this petition and prays to allow the petition.

3. Brief averments of the counter filed by the respondent is as follows:-

The respondent herein is the Appellant in the main case. The petitioner

herein is a Government Medical Officer, Asst.Surgeon in Megalachinnapalli Primary Health Centre, Krishnagiri, Krishnagiri District and his monthly salary is Rs.1,50,000/- and the Salary certificate is filed along with this counter. This petition is not sustainable in law.

The respondent herein has filed a petition in I.A.No.2/2022 to enhance the maintenance amount, in which the respondent has not come forward to file any counter objection and this court draws adverse inference against the respondent and this court is inclined to allow the petition thereby enhancing the maintenance amount from Rs.10,000/- to Rs.25,000/-.

In the 4th para of the Affidavit regarding about the petitioner father's medical reason is completely contraversion and the petitioner's father became unconscious, High blood pressure, High diabetic level is a created false reason and he just admitted for 3 days in Hospital for routine check up. The medical reason stating to condone the delay to set aside the order passed in I.A.No.2/2022 in HMCMA No.19/2022 is not sustainable in law. After the order, on 06.04.2023 and 27.04.2023 the petitioner appeared before this court in this HMCMA No.19/2022 as well as in the case CC.No.29/2016 in DM and JM Court on 25.04.2023 to prove the same the respondent filed the E-court Print out along with this counter.

Only to drag on the proceedings and to harass by failing to pay the EP amount of Rs.2,75,000/- from 08.09.2022 to till date, the petitioner filed this petition. As per the Order of the Hon'ble High Court, Madras in

CRP.No.104/2021, the petitioner has to be paid Rs.1,10,000/- from the date of order i.e., September 2022 to till date and the petitioner herein is willfully disobeyed the order of the Hon'ble High Court. On 02.06.2023, the petitioner herein has gave a promise that next hearing on 07.06.2023 he hand over the 75 socereigns of gold jewels, but he fails to hand over the jewels, ultimate aim to cheat the respondent herein.

If the Alimony is being paid in the form of monthly payments, the Supreme Court of India has set 25% of the net monthly Salary that should be granted to wife by the husband. In case the alimony is being paid in the form of lumpsum amount it usually ranges between 1/5 to 1/3rd of the husband total worth. Hence the respondent prays to dismiss the petition with costs.

5. The point for consideration in this petition is;

Whether the petition is to be allowed or not?

6. Point:

The petitioner stated that on 15.02.2023 the case is posted for counter in I.A.No.2/2022, on that day he was not able to contact his counsel to file counter in the I.A., because of his father became unconscious and admitted in hospital due to increase in the diabetic level and treatment of hyper tension, inhaling problem. He is being on treatment and regular checkup was going on since his father had been taken open heart surgery in three years back. It takes a month for him to recover from this stage of diseases. In the mean time, the petitioner was set exparte for not filing counter in I.A.No.2/2022.

The Respondent herein filed a petition for execution before this court as E.P.No.48/2023. When he came to know about the Exparte order passed by this court against him in I.A.No.2/2022 in HMCMA No.19/2022, he immediately filed Copy Application on 05.04.2023. Thereafter, he contact his counsel and enquired about the status of the case and now he filed the condone the 81 days delay in filing the set aside petition. The non submission of counter is neither willful nor wanton but due to his parents health.

But the respondent denied the allegations and stated that the medical reason stated to condone the delay to set aside the order passed in I.A.No.2/2022 in HMCMA No.19/2022 is not sustainable in law. After the order, on 06.04.2023 and 27.04.2023 the petitioner appeared before this court in this HMCMA No.19/2022 as well as in the case CC.No.29/2016 in DM and JM Court on 25.04.2023 to prove the same the respondent filed the E-court Print out along with this counter.

Only to drag on the proceedings and to harass by failing to pay the EP amount of Rs.2,75,000/- from 08.09.2022 to till date, the petitioner filed this petition. As per the Order of the Hon'ble High Court, Madras in CRP.No.104/2021, the petitioner has to be paid Rs.1,10,000/- from the date of order i.e., September 2022 to till date and the petitioner herein is willfully disobeyed the order of the Hon'ble High Court. On 02.06.2023, the petitioner herein has gave a promise that next hearing on 07.06.2023 he hand over the

75 socereigns of gold jewels, but he fails to hand over the jewels, ultimate aim to cheat the respondent herein.

Even though the petitioner stated that due to ill health of his father only he could not appear before this court and not filed the counter, but not specifically denied about the Order of Hon'ble High Court in CRP.No.104/2021 and also not stated any appeal has been filed as against the said order passed in CRP No.104/2021. Hence the petitioner has to pay the interim maintenance to the respondent herein and the respondent herein stating that the petitioner has to pay the arrears amount Rs.1,10,000/- and stated that the petitioner herein assured to return the 75 sovereign of gold jewels to the respondent herein but has not handed over the same to the respondent herein. Hence in the interest of justice and in order to avoid further delay the petition may be allowed on condition.

In the result, the petition will be allowed on payment of part of the interim maintenance amount awarded in the petition in I.A.No.2/2022 namely Rs.55,000/- to the respondent directly on or before 01.12.2023 failing which the petition shall stand dismissed. Call on 01.12.2023.

Dictated to steno typist directly, typed by her, corrected and pronounced by me in open court, this the 20th day of November 2023.

**Additional District Judge(FTC)
Vellore.**

Both side witnesses and Exhibits: NIL

ADJ (FTC),Vellore.

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),
VELLORE,VELLORE DISTRICT.

PRESENT: Tmt.P.REVATHY, M.A.,M.L.,
Additional District Judge(FTC),Vellore.

Dated this the 20th day of November 2023, Monday

I.A.No.3/2023 in
I.A.No.2/2022 in
HMCMA NO.19/2022

- - -

B.Saravana Kumar, aged 43 years, S/o.B.T.Balan, residing at Emakkalnatham Village, Bargur Post, Krishnagiri Taluk and Krishnagiri District.

.. Petitioner/Respondent/Respondent

//Vs//

P.Sinduja, aged 40 years, W/o.B.Saravanakumar, residing at No.22/1,
P.T.Yogalingam Street, Arcot, Vellore District – 632 503.

...Respondent/Petitioner/Appellant.

Petition filed by the petitioner U/s. 5 of Limitation Act to condone the delay of 81 days in filing the petition to set aside the exparte order dated 15.02.2023 in I.A.No.2/2022.

This petition was coming before me on 16.11.2023 for final hearing in the presence of Thiru.P.G.Thiyagu and Thiru.C.Pritheevraj, Counsels for the Petitioner and the party appeared in person for the respondent and upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration, till this date this court doth order and decreetal order as follows:-

DECREETAL ORDER

1. That the petition will be allowed on payment of part of the interim maintenance amount awarded in the petition in I.A.No.2/2022 namely Rs.55,000/- to the respondent directly on or before 01.12.2023 failing which the petition shall stand dismissed. Call on 01.12.2023..

Given under my hand and the seal of this court, this the 20th day of November 2023.

Additional District Judge(FTC)
Vellore.

