

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 24th day of April 2024, Wednesday

I.A.NO.7/2024
IN
I.A.No.2/2022
IN
HMCMA.NO.19/2022.

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Thiru. B.Saravanakumar,
S/o. B.T. Balan

.. Petitioner/Respondent/Respondent

//Vs//

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

... Respondent/Petitioner/Appellant

This petition cameup before me on 22.04.2023 for final hearing in the presence of M/s. P.G. Thiyagu, C. Pritheevraj and K.Siva, Counsel for the petitioner and in the presence of Tmt. Sindhuja, appears as party in person and upon hearing the arguments on 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 under Or.9 Rule 13 of CPC, prays to set aside the exparte order, dated.15.02.2023.

2.Brief 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 and also his father had been taken open heart surgery and being on regular treatment. 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 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 respondents is as follows:-

The respondent herein is the Appellant in the main case. The petitioner herein had filed the false divorce case against the respondent in HMOP.No.54/2023 and it has been dismissed on 10.08.2022. This petition is not sustainable and has no proof of evidence. The petitioner herein is working as a Assistant Surgeon, Government Chief Medical Officer, 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 petitioner herein, from September 2022 to till date for 19 months of Rs.1,90,000/- (Rupees One Lakh Ninety Thousand only) has not paid.

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.4,75,000/- 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.1,90,000/- 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. Hence the respondent prays to dismiss the petition with costs.

4. The point for consideration in this petition is;

Whether the petition is to be allowed or not?

5. Point:

The petitioner stated that on 15.02.2023 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 and took one month time for recovery and in the mean time the petitioner was set exparte for not filing counter and the petitioner herein came to know about the exaparte order only after the filing of Execution petition by the respondent herein. And stated that there is a delay of 81 days delay in filing the set aside petition and 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 this petition is not sustainable and has no proof of evidence and the petitioner herein has not come forward to file counter in I.A.No 2/2022 and further stated that after the exparte 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 and only to drag on the proceedings and to harass by failing to pay the EP amount of Rs.4,75,000/- from 08.09.2022 to till date, the petitioner filed this petition.

Even though the respondent denied the reason mentioned by the petitioner herein for absence on the hearing date and for his failure to file counter in I.A.No.2/2022, but not made any serious objections. The respondent made alleagations for not paying the maitenance amount and about the disobeying the order of the Hon'ble High Court and there is no serious allegations made for the absence of the petitioner herein and for not filing the counter in I.A.No.2/2022.

On verification of records it is seen that the petition to condone the delay of 81 days in filing the petition to setaside the exparte order was allowed in I.A.No.3/2023 on 8.2.2024 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 herein. Since on the very same allegations the delay of 81 days condoned on condition, the present petition may be allowed

without any condition or cost. Further the petitioner herein filed the counter in I.A.No.2/2022 along with this petition.

In the result, the petition is Allowed. No costs.

Dictated to steno typist directly, typed by her, corrected and pronounced by me in open court, this the 24th day of April 2024.

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

Both side witnesses and Exhibits:

NIL.

**ADJ(FTC),
Vellore.**

FAIR/DRAFT IA ORDER

IA.No.7/2024 IN IA.2/2022 in
HMCMA.No.19/2022
D.O.D.24.04.2024
ADJ(FTC), Vellore.