

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 11.11.2025

Order pronounced on : 05.12.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.2471 of 2025

& CMP.No.14167 of 2025

Meenakshi

... Petitioner

Vs.

Rani Padmini

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the order and decree dated 04.04.2025 made in I.A.No.182 of 2021 in H.M.O.P.No.50 of 2006 by the Family Court, Tiruvarur @ Mannargudi.

For Petitioner : Mr.T.Balaji
for Mrs.Radhika Boopathi

For Respondent : Mr.A.Navaneethakrishnan
Senior Counsel
for Mr.Pandi Thennavan

ORDER

The petitioner is the mother-in-law of the respondent, aggrieved by the order of the Family Court, Thiruvarur at Manargudi, condoning the delay of 3618 days in filing the application to set aside the ex-parte decree dated 20-07-2007.



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2.I have heard Mr.T.Balaji for Mrs.Radhika Bhoopathi, learned counsel for the petitioner and Mr. A. Navaneethakrishnan, learned Senior Counsel for Mr.Pandi Thennavan, learned counsel for the respondent.

3.The respondent and the petitioner's son were husband and wife, having been married to each other on 19-08-1998. According to the petitioner, the respondent left the matrimonial home on 09-08-2001. The husband that is the petitioner's son filed a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act and an ex-parte order came to be passed on 14-08-2003. As the respondent did not come forward to join the husband, the petitioner's son filed proceedings for divorce in the year 2006 and even in the divorce application, the respondent did not choose to appear and an ex-parte decree came to be passed on 20-07-2007. The learned counsel for the petitioner would submit that several attempts were made to serve notice on the respondent and the notices were all returned as 'not claimed or unclaimed'. He would contend that it is not the case of the respondent that a false or incorrect address has been given by the husband and in such circumstances, the Family Court rightly proceeded to order publication and despite publication, the respondent did not choose to



enter appearance in the divorce proceedings and admittedly, the husband has died and there is no purpose in seeking to set aside the ex-parte decree for dissolution.

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4.Mr.T.Balaji, learned counsel for the petitioner would also invite my attention to the 10 documents that were relied on by the respondent's wife and would contend that none of the documents established that the notices were sent to a wrong address. He would state that the respondent could have filed at least one document to establish her correct address and admittedly the same not having been done, the Court cannot be found fault with for accepting non-service and proceeding to effect publication and thereafter set the respondent ex-parte and granting a decree for dissolution of the marriage.

5.The learned counsel for the petitioner would further submit that the husband has executed a Will in favour of his sister's son and the respondent has not even challenged the Will, till date and therefore, there is absolutely no useful purpose to be served by condoning the delay and reopening the matrimonial proceedings, after the demise of one of the spouses. He would further state that the Family Court has clearly fell in error in condoning the



huge and inordinate delay, by imposing costs. He would pray for the revision petition being allowed.

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6.Per contra, Mr.A.Navaneethakrishnan, learned Senior Counsel appearing for the respondent would submit that the husband had played fraud on the respondent on more than two occasions. Even when the restitution of conjugal rights petition was filed, notice was not served on the respondent. He would contend that even in the divorce application, notice was not served. Admittedly, the respondent and the petitioner's son were residing together, even as late as in 2016, in support of which, Ex.P-1 to Ex.P-3 have been filed. The learned Senior Counsel would further state that publication has been effected in a Trichy edition, whereas to the knowledge of the husband, the respondent was residing only at Madurai, with her parents.

7.In this regard, the learned Senior Counsel would rely on Ex.P-10, which was filed along with the application to condone delay before the Family Court. It is therefore the contention of Mr.A.Navaneethakrishnan, learned Senior Counsel that the Family Court has rightly exercised judicial discretion in condoning the delay and giving an opportunity to the



respondent to contest the divorce proceedings and establish her status as wife, which would alone pave the way for the respondent to claim a share in the properties of her husband.

8.The learned Senior Counsel would further state that exercising powers in revision, this Court cannot sit in appeal over the order of the Family Court, in the absence of any perversity or impropriety exercised by the Family Court. He would therefore pray for dismissal of the revision petition.

9.I have carefully considered the submissions advanced by the learned counsel for the revision petitioner and the learned Senior Counsel for the respondent. I have also gone through the records, including the order impugned in the revision petition.

10.It is not in dispute that the respondent was never served in any of the proceedings, be it in the Section 9 petition for restitution of conjugal rights or in the subsequent petition seeking dissolution of the marriage. The notices sent to the respondent have all been returned as 'not claimed or unclaimed'. It is the case of the petitioner that notices were sent to the



correct address and therefore, burden was on the respondent to establish the contrary, which according to the petitioner, the respondent has failed to discharge.

11.As regards the contention of Mr.T.Balaji, learned counsel for the petitioner that with the demise of the husband, nothing survives for consideration in the divorce petition and there is no purpose going to be served by setting aside the ex-parte decree, I am unable to countenance the said argument. Under the umbrella of the ex-parte decree for divorce, the status of the respondent, as wife, is effaced. Unless the respondent is able to establish her legal status as wife of the deceased, i.e. the son of the petitioner, the respondent will not be able to claim her other rights, including right in immovable properties, which her husband may have owned or have had a share. In fact, the husband died on 06.03.2018, pending the application to set aside the ex-parte decree alone and the petitioner was impleaded being the Class-I legal heir, as a necessary party.

12.It is the specific case of the respondent-wife that she was never aware of the proceedings filed against her and immediately upon coming to know about the ex-parte decree from her sister-in-law, she has approached



the Court, seeking to set aside the ex-parte decree, along with the application to condone delay. The said application was resisted by the husband, who was alive then, by filing a counter, contending that the respondent having deliberately avoided the proceedings, cannot seek for condonation of the inordinate delay and that the application itself has been filed after 10 years, only to harass the husband and cause untold mental agony and hardship to him.

13. Before the Family Court, the respondent examined herself as P.W. 1 and marked Ex.P1 to Ex.P10. The petitioner examined herself as R.W.1. However, no documents were filed on behalf of the respondent.

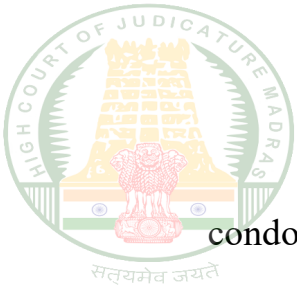
14. I find from the evidence and also the averments made by the respective parties that it is the categorical case of the respondent that her husband has obtained an ex-parte decree, by sending notice to a wrong address. In support of the same, the respondent has also marked Ex.P10, which is a reply sent by the Madurai Municipal Corporation, clarifying that there is no such street, to which the notice was sent in the HMOP.



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15.It is also not known why the publication has been effected in Trichy, when it is not even the case of the husband that the wife resided at Trichy. Even in the HMOP, the address given is only a Madurai address and according to the respondent, she resided along with her husband even in Thiruvarur. Therefore it is not known how the publication effected in a newspaper having circulation in Trichy, was even accepted by the Court in the first place, before setting the respondent ex-parte.

16.In Ex.P9, it is seen that the Court notice sent was effected by a Senior Bailiff of the Madurai District Court, by affixture, as it was informed to him that the respondent had gone out of station. Relying upon the same, the learned counsel for the petitioner contended that the respondent has not disputed the correctness of the address reflected in the HMOP proceedings and therefore had approached the Court with a false case that a wrong address has been given by her husband. In fact, R.W.1, in her cross examination, has admitted that her son and the respondent were living separately after marriage and she visited their home, only when her son had undergoing treatment.



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17.The trial Court has rightly assigned reasons for proceeding to condone the delay of 3618 days, by stating that the bata memo was sent to an improper address, which has been established by production of Ex.P10 and that she lived either at Madurai or at Thiruvarur and never at Trichy. The Family Court has rightly found that the address mentioned to be the address of the respondent in the HMOP was clearly a false/fake address. The family Court has also rightly found that publication has been effected in Malai Malar, evening newspaper, having circulation limited to Trichy area, when the wife never resided in Trichy, even according to the petitioner or the petitioner's son. The trial Court has also found that there was no occasion for the wife to know about the ex-parte decree and therefore, it is probable that on coming to know from her sister-in-law, within 30 days from date of knowledge, the application has been filed, along with an application for condonation of delay by abundant caution.

18.Applying the ratio laid down by the Hon'ble Supreme Court in *Yallawwa Vs. Shantavva*, reported in *AIR 1997 SC 35*, *R.Lakshmi Vs. K.Saraswathi Ammal*, reported in *(1996) 6 SCC 371*, *Inder Singh Vs. the State of Madhya Pradesh*, in *Special Leave Petition (Civil) No.6145 of 2024* dated 21.03.2025 and *C.Prabakar Rao and another Vs. Sama Mahipal*



Reddy and another, reported in 2025 SAR (Civil) 382, the Family Court has thought it necessary to give an opportunity to the respondent to defend the divorce claim filed against her. I do not find any perversity in the findings arrived at by the Family Court, warranting interference in revision.

19.The Hon'ble Supreme Court, recently in *Shivamma (Dead) by LRs Vs. Karnataka Housing Board and others*, in Civil Appeal.No.11794 of 2025 dated 12.09.2025, has also discussed the entire legal position with regard to condonation of delay under Section 5 of the Limitation Act and has held that when the trial court has exercised discretion in condoning delay, the scope of revisional power is limited to limited to interference only when the Court had acted with material irregularity or contrary to law and conclusion is based on no evidence. I do not find that the order of the trial Court accepting the explanation for the delay as sufficient is arbitrary or perverse.

20.Even applying the said decision, I do not find that the order condoning delay requires any interference. It is now also well settled law that the length of delay is immaterial, as long as the applicant seeking condonation of delay is able to show sufficient cause, then he is entitled to condonation of delay.



21.In view of the above, the Civil Revision Petition is dismissed.

There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

05.12.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The Family Court, Tiruvarur @ Mannargudi.



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P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.2471 of 2025
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