

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (NPD) No.2523 of 2017

A. Ramakumar

... Petitioner

Vs

1. N. Karthika

2. Minor R. Samyuktha

3. Minor Sachidhanandhan

.. Respondents

**PRAYER:** Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and final order dated 31.05.2017 made in I.A. No. 562 of 2016 in O.S. No. 32 of 2015 on the file of the Additional Principle Family Judge.

For Petitioner : Mr. K.S. Karthik Raja

For Respondents : Mr. Haja Nazirudeen, Sr. Counsel  
for Mr. R. Tholgappian

**ORDER**

This revision arises against the fair and final order dated 31.05.2017 made in I.A. No. 562 of 2016 in O.S. No. 32 of 2015 on the

file of the Additional Principle Family Judge.

2. The learned counsel for the petitioner would submit that the first respondent has filed O.S. No. 32 of 2015 before the Additional Family Court, Coimbatore seeking for a preliminary decree for maintenance of Rs.5000/- per month to the first respondent and Rs.7500/- per month for each children/ respondents 2 and 3; and for creating charge against the schedule of properties, for the maintenance awarded. In the said petition, an ex-parte order was passed on 01.08.2016. Hence, an Interlocutory Application in I.A. No.562/2016 was filed by the revision petitioner to condone the delay of 71 days in filing the petition to set aside the ex-parte decree. The court below dismissed the said application. Challenging the same, the present revision petition has been filed before this Court.

3. According to the petitioner, he was not aware of the said proceedings coming up before the court below and the petitioner has not received any summons from the trial court. As soon as he came to know of the ex-parte decree dated 01.08.2016, he filed an application to set aside the ex-parte decree, along with an application to condone the delay of 71 days. But, the court below, without considering the

submissions made by the learned counsel for the petitioner, dismissed the I.A. No. 562/2016.

4. The learned counsel for the respondents strictly objected the revision, stating that the revision petitioner has delayed the entire proceedings and if the petition is allowed, the revision petitioner would dispose of the suit schedule properties. It was further submitted that in the event of allowing the petition, it would be difficult for the respondents to recover the arrears of maintenance amount and also future maintenance, payable by the petitioner. Therefore, prays to dismiss the revision petition.

5. Heard the submissions of the learned counsel for the parties and perused the material available on records.

6. It is submitted by the petitioner that he has not received any summons or information and therefore he was not aware of the ex-parte decree passed against him. The delay is neither wilful nor wanton but is only due to bonafide reasons. Without deciding on merits, the court below has passed the orders in favour of the respondents. Without

prejudice to the rights, the revision petitioner undertakes to pay the arrears of maintenance to the respondents, pending disposal of the said petition.

7. It is the submission of the respondents that the revision petitioner has paid the maintenance only upto June 2017 and thereafter the maintenance has not been paid to the respondents and two children. The revision petitioner undertakes that the maintenance for the remaining period will be paid to the respondents, without prejudice to the right in the decree. In view of the statement made by the petitioner and in order to provide an opportunity to decide the petition on merits, this Court has no hesitation to set aside the order passed by the court below.

8. In view of the above submission of the parties, being satisfied with the reasons stated in the affidavit for the delay of 71 days and in the light of the judgement of the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.***, reported in (2013) 12 SCC 649, this Court is inclined to pass the following order :-

1. The impugned order dated 31.05.2017 passed in I.A. No. 562 of 2016, is set aside, on condition that the revision petitioner has to pay the maintenance from July 2017 till November 2017 within four weeks from the date of receipt of a copy of this order and continue to pay in future also.
2. In the event of the petition filed under Order 9 Rule 13 is allowed, both the parties undertake to co-operate for the disposal of the petition, within a period of six months.
3. The court below is directed to dispose of the petition, within the aforesaid period.
4. In the meantime, the revision petitioner shall not create any lien or charge over the properties, pending disposal of the petition, to protect the right of the respondents/ petitioners.

9. The Civil Revision Petition is allowed, with the above directions. No costs.

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Index : Yes/ No

[Issue order copy within one week]



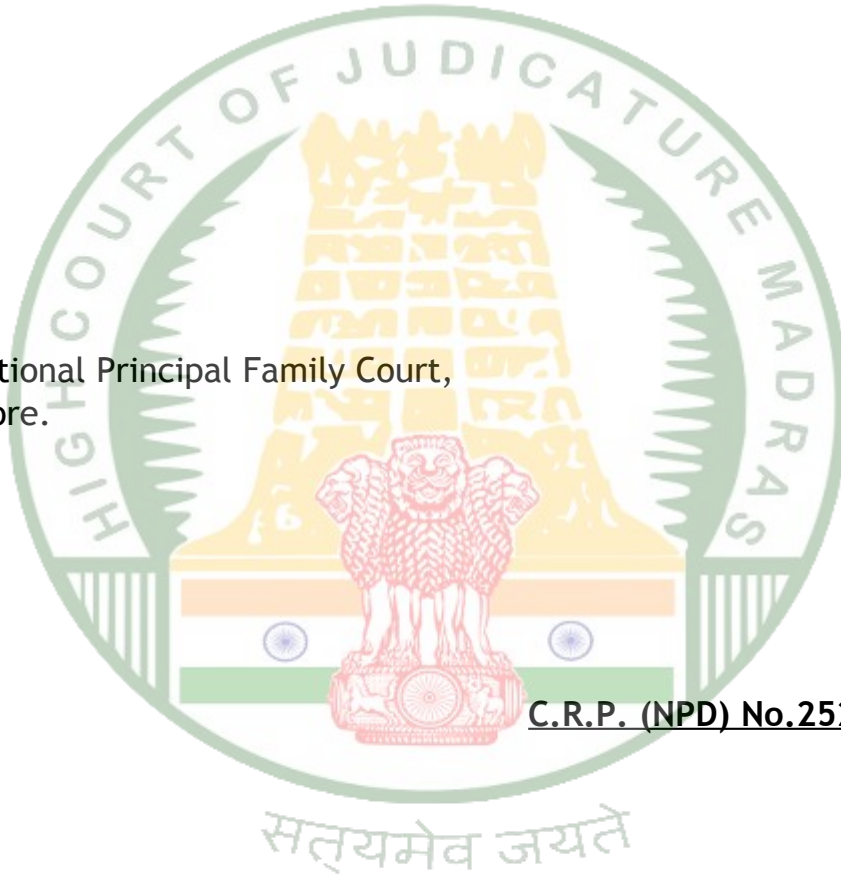
D. KRISHNAKUMAR J.,

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To

The Additional Principal Family Court,  
Coimbatore.



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