

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2253 of 2015
and M.P.No.1 of 2015

Jayashree

... Petitioner

Vs.

S.V.Ganeshkumar

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 07.04.2015 made in I.A.No.221 of 2015 in E.P.No.235 of 1999 in M.O.P.No.42 of 2012 on the file of the District Judge, Karaikal, thereby dismissing the petition filed by the appellant to set aside the ex parte.

For Petitioner : Mr.G.K.Ilanthiraiyan
for M/s.Sai Bharath and Ilan

For Respondent : Mr.T.P.Manoharan

ORDER

Challenging the fair and decreetal order passed in I.A.No.221 of 2015 in M.O.P.No.42 of 2012 on the file of the District Court, Karaikal, the petitioner, who is the wife of the respondent, has filed the above Civil Revision Petition.

2.The respondent husband filed the petition in M.O.P.No.42 of 2012 for divorce on the ground of cruelty. The petitioner wife filed her counter and was contesting the Original Petition. Subsequently, after filing of the proof affidavit when the matter was posted for marking of documents, since the petitioner wife remained absent, the trial Court passed an exparte decree on 04.03.2015. Subsequently, the petitioner wife filed an application in I.A.No.221 of 2015 to set aside the exparte decree dated 04.03.2015. In the affidavit filed in support of the petition, she has stated that she was travelling from Tanjore to Karaikal on 04.03.2015 to attend the Court proceedings and that the bus in which she was travelling got punctured and broke down and therefore, she could not appear before the Court on 04.03.2015. The petition filed by the petitioner was opposed by the respondent. The trial Court, taking into consideration the case of both parties, dismissed the petition finding that the reasoning given by the petitioner cannot be accepted.

3.Admittedly, there is no delay in filing the petition to set aside the exparte decree. In the absence of any delay and by giving acceptable reason, the petitioner has satisfactorily explained her non appearance on 04.03.2015. In these circumstances, the trial Court should have allowed the application in the interest of justice and permitted the petitioner to contest the matter on merits.

4.I am of the considered view that in the interest of justice, the petitioner should be given an opportunity to contest the matter on merits. Accordingly, the fair and decreetal order passed in I.A.No.221 of 2015 in M.O.P.No.42 of 2012 are set aside. The application in I.A.No.221 of 2015 stands allowed.

5.Since the Original Petition in M.O.P.No.42 of 2012 is pending from the year 2012, I direct the District Judge, Karaikal to dispose of the Original Petition in M.O.P.No.42 of 2012, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order and report the same to the Registry of this Court.

6.With this observation, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va
To

15.12.2015

The District Court,
Karaikal.

M.DURAI SWAMY,J.

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