

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:9.9.2015

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.R.P.NPD.No.152 of 2012

& M.P.No.1 of 2012

Jeyanthi

... Petitioner

Versus

Balavenkatesh

...Respondent

Prayer: Revision petition is filed to set aside the Exparte order in I.A.NO.47 of 2011 in H.M.O.P.No.28 of 2011 dated 17.08.2011 passed by the Sub -Court, Perambalur.

For Petitioner : Mr.S.Senthil Kumar

For Respondent : No appearance

ORDER

This memorandum of civil revision has been directed against the fair and decretal order dated 17.08.2011 and made in I.A.No.47 of 2011 in

H.M.O.P.No.28 of 2011, on the file of the learned Subordinate Judge, Perambalur.

2.The revision petitioner herein is the petitioner in the matrimonial proceedings in H.M.O.P.No.28 of 2011, whereas the respondent is the respondent therein.

3.Despite the service of notice on the respondent, even as early as on 12.10.2012, she has not chosen to appear and for the past three years, this revision petition has been pending unnecessarily without any progress. Therefore, there is no other go for this court excepting to hear Mr.S.Senthil Kumar, learned counsel for the revision petitioner and dispose this revision petition on merits.

4.It is manifested from the records that the revision petition has been filed by the revision petitioner before the learned Subordinate Judge, Perambalur under Section 13(1) of the Hindu Marriage Act as against the respondent herein seeking the relief of divorce on the ground of cruelty.

5.When the petition was posted for hearing on 24.06.2011, the revision petitioner was not able to appear as the bus in which he was travelling was break down. Hence, the petition in H.M.O.P.No.28 of 2011 was dismissed for non

prosecution. For the purpose of setting aside the order of dismissal dated 24.06.2011, the revision petitioner had filed an application in I.A.No.47 of 2011 under Order IX, Rule 7 of Civil Procedure Code.

6.In so far as this application in I.A.No.47 of 2011 was concerned it was taken up for hearing on 17.08.2011. On that day, as it is seen from the order of the court below, the petitioner's counsel had made his appearance and the respondent's counsel had also appeared. However, it is stated that since the revision petitioner had not appeared in person physically, this petition was dismissed.

7.Mr.S.Senthil Kumar has argued that the impugned order dated 17.08.2011 itself was against the principal of natural justice and therefore, it was liable to be set aside.

8.This court has considered the submissions made by Mr.S.Senthil Kumar, learned counsel for the petitioner and perused the impugned order. Having regard to all the related facts and circumstances, this court is of the view that the impugned order dated 17.08.2011 is deserved to be set aside. Accordingly, the revision petition is allowed and the impugned order dated 17.08.2011 is set aside consequently, the application in I.A.No.47 of 2011 is allowed. The main matrimonial proceedings in H.M.O.P.No.28 of 2011 is

restored to its original file. The learned Sub-Judge, Perambalur is directed to

T. MATHIVANAN.J,

dn

dispose the petition in H.M.O.P.No.28 of 2011 as expeditiously as possible,
preferably within a period of four months. No order as to costs.

09.09.2015

Dn

Index:Yes/No.

Internet:Yes/No.

To:

The learned Subordinate Judge,
Perambalur.

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