

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE M.S. RAMESH

Civil Miscellaneous Appeal No. 1361 of 2017

N. Gopi Kuppuraj

.. Appellant

Versus

M. Uma

.. Respondent

Appeal filed under Section 19 of the Family Courts Act, 1984 against the fair and decretal order dated 22.10.2016 passed in I.A. No. 172 of 2016 in F.C.H.M.O.P. No. 54 of 2014 on the file of Family Court, Dharmapuri

For Appellant : Mr. V. Sakkarapani
For Respondent : Mr. S. Ashok Kumar

JUDGMENT**(JUDGMENT OF THE COURT WAS DELIVERED BY R. SUBBIAH, J)**

The appellant is the husband. The respondent is the wife. The appellant filed H.M.O.P. No. 181 of 2011 on the file of Sub Court, Dharmapuri for granting a decree of divorce. By order dated 12.02.2012, the learned Subordinate Judge, Dharmapuri granted an exparte decree of divorce as there was no representation for the respondent inspite of service of notice. Subsequently, the HMOP No. 181 of 2011 stood transferred to the file of Family Court, Dharmapuri and re-numbered as F.C.H.M.O.P. No. 54 of 2014 where, the respondent herein has filed I.A. No. 8 of 2014 in F.C.H.M.O.P. No. 54 of 2014 to set aside the exparte decree dated 12.02.2012. It appears that the said application filed by the respondent was

allowed the Original Petition was restored and taken on file. Subsequently, the F.C.H.M.O.P. No. 54 of 2014 was listed for hearing on 17.06.2016 for filing proof affidavit of the appellant herein, but the appellant herein did not file the same. Subsequently, on 16.08.2016 when the Original Petition was listed for hearing, there was no representation for the appellant herein, hence, F.C.H.M.O.P. No. 54 of 2014 was dismissed for default on 11.08.2016. Therefore, to set aside the Order of dismissal dated 11.08.2016, the appellant herein has filed I.A. No. 172 of 2016 in F.C.H.M.O.P. No. 54 of 2014. The Family Court, Dharmapuri has taken up I.A. No. 172 of 2016 and posted it for hearing on 17.06.2016, 24.06.2016, 01.07.2016, 14.07.2016, 21.07.2016, 28.07.2016, 04.08.2016 and 11.08.2016, but on all those days, there was no representation for the petitioner. Therefore, by order dated 22.10.2016, the Family Court, Dharmapuri dismissed I.A. No. 172 of 2016 on the ground that the petitioner was not diligent enough in prosecuting the application inspite of several opportunities given to him. Challenging the aforesaid order dated 22.10.2016 passed in I.A. No. 172 of 2016 on the file of Family Court, Dharmapuri, the present appeal is filed by the appellant.

2. The learned counsel appearing for the appellant submits that the Family Court, without affording sufficient and adequate opportunity to the appellant has passed the order dated 22.10.2016 dismissing I.A. No. 172 of 2016 for default. The Family Court ought to have granted one more opportunity so as to enable the appellant to prosecute the application. The learned counsel for the appellant further submits that having regard to the nature of dispute between the parties, one more opportunity shall be given to the appellant to enable him to prosecute the

application.

3. On the other hand, the learned counsel for the respondent would submit that inspite of several opportunities given to the appellant, he has not chosen to utilise the same. The appellant did not exercise due diligence in prosecuting the application filed by him. The Family Court, after granting several adjournments, has dismissed the application filed by the appellant by specifically observing that the appellant was lethargic in prosecuting the application. The learned counsel for the respondent therefore prayed for dismissal of the appeal.

4. We have heard the counsel for both sides and perused the materials placed on record. Admittedly, before passing the order of dismissal dated 22.10.2016, the Family Court has given several opportunities to the petitioner to enable him to prosecute the application to set aside the exparte order dated 11.08.2016 passed in F.C.H.M.O.P. No. 54 of 2014. However, the petitioner did not prosecute the application diligently. At the same time, we are of the view that the appellant can be given one more opportunity to prosecute the application in order to render complete justice, subject to payment of costs.

5. Accordingly, the Civil Miscellaneous Appeal is allowed and the order dated 22.10.2016 passed in I.A. No. 172 of 2016 in F.C.H.M.O.P. No. 54 of 2014 on the file of Family Court, Dharmapuri is set aside subject to condition the appellant pays a sum of Rs.5,000/- (Rupees Five Thousand Only) to Thulir Charitable Trust, No.74/57, E.V.K. Sampath Road, Vepery, Chennai – 600 007 on

or before 28.06.2017. No costs. Consequently, connected miscellaneous petition is closed.

6. Post the Appeal for reporting compliance on 29.06.2017.

(R.P.S.J.,) (M.S.R.J.,)

21-06-2017

rsh

Speaking / Non-speaking Order
To

The Presiding Officer
Family Court, Dharmapuri

R. SUBBIAH, J
and
M.S. RAMESH, J

rsh

CMA No. 1361 of 2017

21-06-2017

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