

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

C.M.A.No.1071 of 2015 and
M.P.No.1 of 2015

T.S.Meenakshi

... Appellant

Vs.

A.Sreenivasa Gopalan

... Respondent

Civil Miscellaneous Appeal filed under Order 43 Rule 1 (d) of the Code of Civil Procedure Code against the fair and decreetal order of the III Additional Principal Judge, III Additional Family Court, Chennai in I.A.No.3214 of 2012 in O.P.No.2921 of 2012 dated 09.04.2015 refusing to set aside the exparte decree dated 05.11.2012.

For Appellant : Ms.Jayashree Narasimhan
For Respondent : Mr.S.Udayakumar

J U D G M E N T

Challenging the fair and final order passed in I.A.No.3214 of 2012 in O.P.No.2921 of 2012 on the file of the III Additional Judge, Family Court, Chennai, the respondent has filed the above appeal.

2.The respondent, husband, filed the Original Petition in O.P.No.2921 of 2012 for divorce on the ground of cruelty.

3.Since the appellant failed to appear before the Family Court on 08.10.2012, she was called absent and the matter was adjourned to 28.10.2012 for recording exparte evidence. Recording the exparte evidence, the Family Court passed an exparte decree for divorce on 05.11.2012. According to the appellant, she was living in Nagpur with two young children, therefore, she could not entrust the custody of her children to anyone. Further, she has stated that she was also unwell and could not travel frequently to Chennai, therefore, she could not be present in the Court on 12.09.2012 and 08.10.2012.

4.In the meantime, the appellant also filed a Transfer Petition (Civil) No.1174 of 2012 before the Hon'ble Supreme

Court and the Apex Court, by its order dated 24.09.2012, granted and order of interim stay of further proceedings in O.P.No.2921 of 2012. The appellant has also stated that inspite of having received notice from the Apex Court in the said Transfer petition, the respondent had suppressed the said fact and taking advantage of the appellant's absence, obtained an exparte decree for divorce on 05.11.2012.

5. Thereafter, the appellant filed an application in I.A.No.3214 of 2012 under Order 9 Rule 13 of the Code of Civil Procedure to set aside the exparte decree dated 05.11.2012 narrating the reasons for her non-appearance. The respondent filed his counter and contested the application. The Family Court dismissed the application stating that the appellant has not given any valid reason for her non-appearance. Aggrieved over the same, the wife has filed the above appeal.

6. When the matter is taken up for hearing, the learned counsel for the appellant submitted that if the respondent is agreeable, the impugned order may be set aside and the appellant may be given an opportunity to contest the Original Petition in O.P.No.2921 of 2012 on merits.

7. Mr. S. Udayakumar, learned counsel for the respondent fairly submitted that the order may be set aside and the appellant may be given an opportunity to contest the Original Petition on merits.

8. In view of the submissions made by the learned counsel on either side, the fair and decretal order passed in I.A.No.3214 of 2012 in O.P.No.2921 of 2012 are set aside and the exparte decree dated 05.11.2012 passed in O.P.No.2921 of 2012 is set aside. The III Additional Judge, Family Court, Chennai is directed to decide the Original Petition in O.P.No.2921 of 2012 on merits and in accordance with law, after giving an opportunity of hearing to both the sides within a period of three months from the date of receipt of a copy of this order.

9. With these observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

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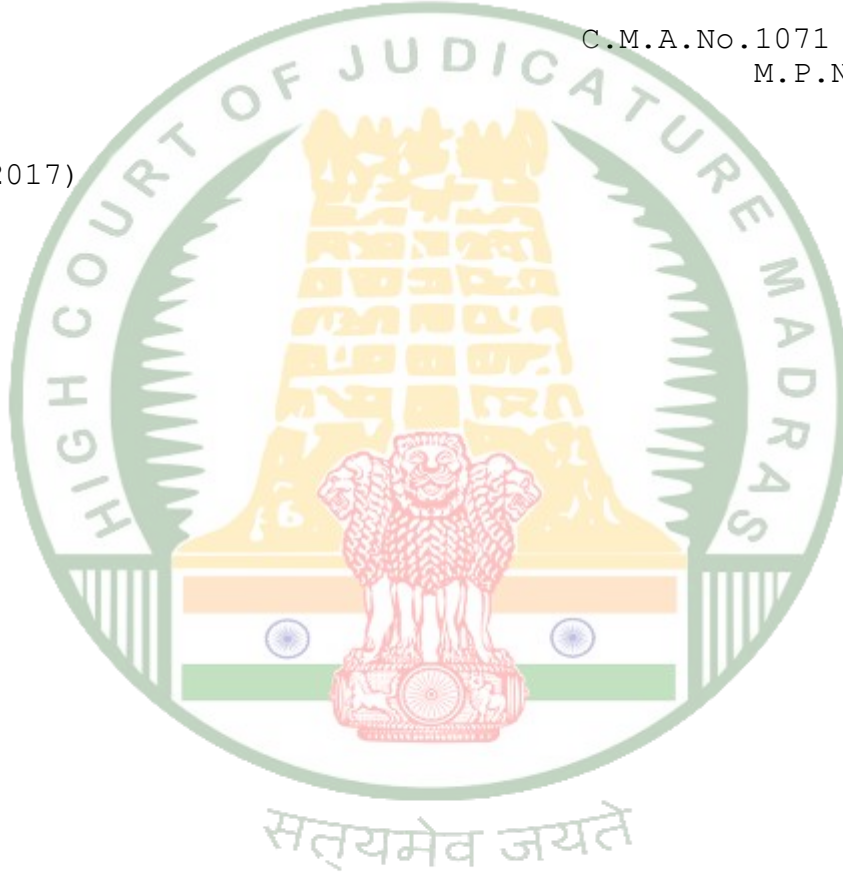
To

The III Additional Principal Judge,
III Additional Family Court,
Chennai.

+1 Cc to Mrs. Jayashree Narasimhan, Advocate sr 79274.
+1 cC to Mr.S. Udayakumar, advocate sr 79371

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KGK(CO)
SP(10/11/2017)



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