

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMAINAM

C.R.P.(P.D.) No.1460 of 2014

and

M.P.No.1 of 2014

L.Veethus Durairaj

... Petitioner

Vs.

S.Sobia Dorathi

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the petition and Order passed in I.A.No.1314 of 2013 in D.O.P.No.117 of 2012 on the file of the District Judge, Villupuram dated 12.12.2013.

For Petitioner : Mr.S.Ambigapathi

For Respondent : Mr.R.Babu

ORDER

The Revision Petition is filed challenging the order dated 26.04.2013 passed in I.A.No.1314 of 2013 in D.O.P.No.117 of 2012 on the file of the District Judge, Villupuram.

2. The petitioner herein filed D.O.P.No.117 of 2012 on the file of the District Judge, Villupuram, seeking a decree of dissolution of marriage dated 26.01.1995 solemnized between the petitioner and the respondent. In the

said D.O.P, the exparte decree was passed by the trial Court on 06.04.2013. The respondent filed a petition dated 26.04.2013 to set aside the exparte order dated 06.04.2013 and the docket order of the trial Court states that :

"The petitioner counsel endorsed that the counsel for respondent refused to take notice. Hence notice may be Ordered to party".

3. Accordingly, the trial Court ordered notice to the respondent and posted the matter on 05.10.2013. On 05.10.2013, there was no progress and again on 28.10.2013 notice sent to the respondent was returned. At this stage, the trial Court posted the matter on 26.11.2013 and on that day, the respondent in I.A.No.1314 of 2013 in D.O.P.No.117 of 2012 called absent. Again the case was posted on 12.12.2013. On that day, it was found that the notice sent to the respondent by post was returned 'unclaimed'. Since the post was returned as 'unclaimed', the respondent was called by the trial Court and on that day and I.A.No.1314 of 2013 in D.O.P.No.117 of 2012 to set aside the exparte order was allowed. Challenging the same, the petitioner / husband filed the present revision petition.

4. The learned counsel appearing for the petitioner contended that it is the case of divorce and the respondent had entered appearance in the

main petition. Further she filed a counter, such being the case, she ought not to have allowed the trial Court to pass the order of exparte decree. The respondent was not diligent in conducting the case before the trial Court and therefore, the present civil revision petition is to be allowed.

5. The learned counsel appearing for the respondent opposed the petition by stating that on 06.04.2013, she was suffering from severe fever and she was under bed rest. Therefore, she was unable to contact her counsel on record and not proceeded with the case, which was posted on 06.04.2013. There was no intention on the part of the respondent to remain absent and due to the circumstances stated supra, she was absent and the trial Court passed the order of exparte decree. Subsequently, she filed a petition to set aside the exparte decree diligently without any further delay and therefore the counsel for the respondent urged this Court that she may be given an opportunity to adjudicate the matter on merits.

6. Considering the rival contentions raised both by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

S.M.SUBRAMANIAM,J.

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7. This Court is of the opinion that no case should be decreed or

decided without complete adjudication. The complete adjudication alone will meet ends of the justice and the parties cannot simply walk with an exparte order and attempt to execute the same. The point to be considered is as to whether the parties are diligent enough to approach the Courts or not. In the case on hand, though the exparte decree was passed by the trial Court on 06.04.2013, the respondent filed the petition to set aside the same in time. Further, she entered appearance in the case at the first instance and filed her counter affidavit also in time. Such being the conduct of the party, this Court is not inclined to interfere with the findings of the trial Court and accordingly, the order passed by the trial Court in I.A.No.1314 of 2013 in D.O.P No.117 of 2012 dated 26.04.2013 is confirmed and the Civil Revision Petition No.1460 of 2014 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.01.2017

Index : Yes
Internet : Yes
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To
The District Judge,
District Court,
Villupuram.

C.R.P.(P.D.) No.1460 of 2014
<http://www.judis.nic.in>