

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.10.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM  
and  
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.1919 of 2017

G.Janarthanan .. Appellant/Petitioner

Vs

S.Mahalakshmi .. Respondent/Respondent

Civil Miscellaneous Appeal preferred under Section 19 of Family Courts Act, 1984, against the judgment and decree dated 18.01.2016 made in F.C.H.M.O.P.No.89 of 2014 on the file of the Family Court, Dharmapuri.

For Appellant : Mr.R.Marudachalamurthy  
For Respondent : No appearance

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Civil Miscellaneous Appeal has been directed against the order dated 18.01.2016 passed in F.C.H.M.O.P.No.89 of 2014 by the Family Court, Dharmapuri.

2. The petitioner herein as petitioner has filed F.C.H.M.O.P.No.89 of 2014 on the file of the trial Court under Sections 13[1][ia][ib] of Hindu Marriage Act, 1955, wherein, the present respondent has been shown as respondent.

3. It is averred in the petition that both the petitioner and respondent have moved each other and their marriage has taken place on 08.02.2009 and registered on 05.06.2009. At the time of marriage, the petitioner has served in Tamil Nadu Police Department. The respondent has used to have frequent contacts with her friends. The respondent has also preferred a complaint to higher officials of the petitioner. The respondent has failed to perform her marital obligations. The petitioner has

filed a divorce petition in M.O.P.No.168 of 2010 on the file of the Sub Court, Dharmapuri and subsequently, withdrawn the same. Since the respondent has caused torture to the petitioner, the present petition has been filed for getting the relief sought therein.

4. The respondent has remained ex parte.

5. On the basis of available evidence on record, the trial Court has dismissed the petition, mainly on the ground that already on similar grounds, the petitioner has filed M.O.P.No.168 of 2010 and subsequently withdrawn. Against the dismissal order, the present Civil Miscellaneous Appeal has been preferred.

6. Even in the present Civil Miscellaneous Appeal, the respondent has remained ex parte.

7. Learned counsel appearing for the appellant/petitioner has contended to the effect that the appellant/petitioner has already filed M.O.P.No.168 of 2010 on similar grounds for getting divorce against the respondent. On the basis of assurance given by the respondent to live peacefully with the petitioner, the same has been withdrawn and the trial Court, without considering the said application, has erroneously dismissed the present petition and therefore, the dismissal order passed by the trial Court is liable to be set aside.

8. It is seen from the records that the appellant/petitioner has filed similar petition M.O.P.No.168 of 2010 on the file of the Sub Court, Dharmapuri and subsequently, he has withdrawn the same.

9. Even though on the side of the petitioner/appellant, it has been contended to the effect that M.O.P.No.168 of 2010 has been withdrawn, on the basis of assurance given by the respondent. No document has been filed for the purpose of proving the above factual aspect. However, the trial court has dismissed the present petition, simply on the grounds mentioned in the petition. The approach made by the trial Court is not proper and that too, without seeing the judgment passed in M.O.P.No.168 of 2010 and therefore, the order passed by the trial Court is liable to be set aside and the matter is liable to be remitted to the file of the trial Court.

10. In fine, this Civil Miscellaneous Appeal is allowed without costs. The order passed in F.C.H.M.O.P.No.89 of 2014 by the trial Court is set aside and F.C.H.M.O.P.No.89 of 2014 is remitted to the file of the trial Court. The trial Court is directed to issue notice to the respondent. In the trial Court, the petitioner is directed to file certified copies of the petition filed in M.O.P.No.168 of 2010 and final order passed

thereon. The trial Court is directed to dispose of F.C.H.M.O.P.No.89 of 2014 before the end of December 2017 and report the same to the Registry without fail.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Family Court,  
Dharmapuri.

2.The Section Officer  
VR Section High Court, Madras

3.The Section Officer  
Judicial Section High Court Madras

+1 cc to M/s.R.Marudhachalamurthy Advocate sr 72819

C.M.A.No.1919 of 2017

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