

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 1953 of 2017

Maria @ Sijo Paul ... Appellant/Respondent

Versus

Vivek Thambuswamy ... Respondent/Claimant

Appeal filed under Section 19 of the Family Courts Act, 1984 against the Decree and Judgment dated 06.01.2016 passed in O.P. No. 4382 of 2012 on the file of III Additional Principal Judge, III Additional Family Court, Chennai.

For Appellant : Mr.T.V.Vineeth Kumar

For Respondent : Mrs.Sheila Jayaprakash

JUDGMENT

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

This appeal is filed by the appellant/wife as against the exparte decree of divorce granted by the Family Court, Chennai on 06.01.2016 in O.P. No. 4382 of 2012 filed by the husband/respondent.

2. The respondent herein has filed the Original Petition under Section 10 (I) (X) of The Indian Divorce Act to dissolve the marriage solemnised between him and the respondent on 06.02.2012 on the ground of cruelty. According to the respondent, at the time of marriage, the appellant was working in Dubai with a Travel Agent called Air Link International and therefore, the appellant was with the respondent only for two weeks after the marriage. Thereafter, the appellant went to Dubai and joined duty. On 5th August 2012 the respondent went to Dubai to help the appellant pack her articles from Dubai so as to enable her to join him in Chennai. According to the respondent, at no point of time, did he compel the appellant to resign her job at Dubai and the resignation of her employment by the appellant was on her own accord. According to the respondent, from the beginning of the marriage, the appellant had been very quick tempered and would raise her voice for no reason. It is further stated that on several occasion, the appellant physically assaulted the respondent and caused him injuries. The appellant had scant respect towards the

respondent and his family members and inspite of very many pursuasion, the appellant did not change her attitude. The violent behaviour of the appellant increased manifold and there was a genuine apprehension in the mind of the respondent that the appellant may inflict self injuries and throw the blame on him. Further, the appellant often threatened the respondent that she would give a police complaint against him and his family members and falsely implicate them in a criminal case as if the respondent and his family members have demanded dowry from her. In such circumstances, the respondent has filed the Original Petition for divorce on the grounds of cruelty. As a counter-blast, the appellant filed a Petition in C.C. No. 298 of 2013 before the II Metropolitan Magistrate, Egmore, Chennai under Section 12 of the Protection of Women from Domestic Violence Act, 2005 with false and untenable averments.

3. Resisting the Original Petition, the appellant herein has filed a counter affidavit and denied the averments made in the Original Petition as false and imaginery. According to the appellant, it is at the instance of the respondent herein she has resigned her employment with her employer at Dubai on 31.07.2012. After the marriage, the respondent had withdrawn all her savings amount and led a wayward life. The allegations made by the respondent relating to physical assault by the appellant are false and imaginery. It is further contended that the respondent and his family members used to drink alcohol every evening with their friends and such in-house party will go upto midnight. When this was questioned by the appellant, the respondent not only abused the appellant but also demanded to bring an amount of Rs.50 lakhs and to invest it in the family business. It is true that the appellant has filed C.C. No. 298 of 2013 seeking to punish the respondents 1 to 3 therein for the domestic violence committed by them and to direct the first respondent/husband to pay a sum of Rs.30,000/- to the appellant towards monthly maintenance and separate residence. Even though an order dated 29.11.2013 was passed in the Criminal Proceedings directing the respondent herein to pay Rs.30,000/- per month to the appellant, the said order has not been complied with by the respondent. Therefore, the respondent prayed for dismissal of the Original Petition.

4. Before the Family Court, as the appellant was not present, she was set exparte and the matter was posted for passing an exparte decree. Before the Family Court, the respondent examined himself as PW1 and marked Exs. P1 to P4. On perusal of the averments made in the Proof affidavit of the respondent and on perusal of Exs. P1 to P4 filed by the respondent, the Family Court passed an exparte decree of divorce.

5. The learned counsel for the appellant would contend that the appellant has filed a counter affidavit denying the averments contained in the Original Petition. The appellant was defending the Original Petition with diligence. While so, the Family Court, without affording sufficient and adequate opportunity for the appellant to defend the Original Petition

has passed the exparte order granting divorce. It is further contended that even though the Family Court has recorded that there is no representation for the appellant, in the exparte order, the Family Court has dealt with the averments made in the counter affidavit while passing the exparte decree of divorce. The learned counsel for the appellant would only contend that one more opportunity may be granted to the appellant to contest the Original Petition on merits by setting aside the exparte decree and Judgment of the Family Court.

6. On the other hand, the learned counsel for the respondent would contend that inspite of sufficient opportunity having been given to the appellant, the appellant did not care to contest the Original Petition. Earlier, the appellant did not appear and therefore she was set exparte on 19.12.2013. To set aside the exparte decree, she has filed I.A. No. 65 of 2014 on 09.01.2014 and the same was dismissed by the Court below for default on 14.10.2014. Thereafter, when the Original Petition was taken up for exparte evidence, she filed I.A. No. 21 of 2015 to set aside the order of dismissal passed in I.A. No. 65 of 2014 with a delay of 19 days and it was allowed. Thereafter, the respondent has filed C.R.P. No. 1538 of 2015 before this Court for a direction to the Court below to dispose of the Original Petition within a specified period. By order dated 15.04.2015, this Court directed the Court below to dispose of the Original Petition on or before 31.12.2015. In spite of such direction issued by this Court, when the Original Petition was listed for hearing on 06.01.2016, the appellant did not appear and therefore, the exparte order was rightly passed by the Court below. The appellant was fully aware of the hearing of the Original Petition and inspite of the same, she failed to appear before the Court below to contest the Original Petition. The appellant absented herself on the date of hearing of the Original Petition with an intention to prolong the matrimonial proceedings. Therefore, the learned counsel for the respondent prayed for dismissal of the appeal.

7. We have heard the counsel for both sides and perused the materials placed on record.

8. On appreciation of the above factual aspects, we have noticed that the appellant has filed a counter affidavit denying the averments contained in the Original Petition. Having regard to the above factual background and taking into account the matrimonial dispute between the parties, we are of the view that in the interest of justice, the appellant can be given one more opportunity to contest the Original Petition filed by the respondent seeking divorce on the ground of cruelty.

9. In the result, the Decree and Judgment dated 06.01.2016 passed in O.P. No. 4382 of 2012 on the file of III Additional Principal Judge, III Additional Family Court, Chennai is set aside. O.P. No. 4382 of 2012 filed by the appellant is restored to the file of the Family Court, Chennai.

The Civil Miscellaneous Appeal is allowed. No costs. We direct the Family Court, Chennai to take up O.P. No. 4382 of 2012 on it's file and pass order on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this Judgment. We also direct the appellant as well as the respondent to extend their cooperation for disposal of the Original Petition by the Family Court within the time indicated by us. Consequently, connected CMP No. 10560 of 2017 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The III Additional Principal Judge
(III Additional Family Court)
Chennai.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.T.V.Vineeth Kumar, Advocate, S.R.No.47403

C.M.A.No.1953 of 2017

SSI (CO)
CA(01/08/2017)

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