

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2017

CORAM:

**THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ**

**C.M.A.NO.999 OF 2017
AND CMP NO.4936 OF 2017**

N.S.Sivasukanthi

... Appellant

Versus

K.Jothi Venkatachalam

... Respondent

PRAYER: Appeal filed under Section 19 of the Family Courts Act, against the order dated 30.03.2007 made in F.C.O.P.No.2749 of 2006, on the file of the First Additional Family Court, Chennai.

For Appellant	:	Mr.Surendran for Mr.S.Thirumavalavan
For Respondent	:	Mr.Abdul Rahman

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the order dated 30.03.2007, passed in F.C.O.P.No.2749 of 2006, by the First Additional Family Court, Chennai, the wife/appellant, has preferred the present appeal.

2. The husband/respondent has filed a petition for divorce under Section 13(1)(i-a) and 13(1)(iii) of the Hindu Marriage Act, 1955, on the grounds of cruelty. Though the Trial Court, after considering the evidence adduced by the parties therein granted a decree of divorce on 30.03.2007, has declined to grant the relief in respect of prayer under Section 13(1)(iii) of the Hindu Marriage Act, 1955. Aggrieved by the same, the wife / appellant has filed the above appeal.

3. Record of proceedings shows that on 03.03.2017, this Court has passed the following order:

" Wife has filed instant Civil Miscellaneous Appeal against the judgment and decree dated 30.03.2007 in F.C.O.P.No.2749 of 2006 on the file of First Additional Family Court, Chennai, for which, a decree of divorce has been granted.

2. Registry has returned the appeal papers on 03.09.2008. Contending inter-alia that the returned papers got mixed up with other bundles and instructions were to be obtained from the appellant and during that process, there was a delay of 1452 days in representing CMA SR No.31784 of 2007, M.P.No.1 of 2012 has been filed.

3. Upon notice, respondent - husband entered appearance.

4. Today when the matter is taken up for further hearing, representing the learned counsel on record for the respondent Mr. Abdul Rahman submitted that there is no objection for the delay in representation, being condoned. He further submitted that respondent has no objection for the decree being set aside for the reason that after the judgment and decree in F.C.O.P.No.2749 of 2006 dated 30.03.2007, on the file of I Additional Family Court, Chennai, both the parties have rejoined and begotten a male child. They are living together. Learned counsel for the respondent has also made an endorsement to that effect.

5. Placing on record the above, delay is condoned. Registry is directed to number the appeal."

4. In view of the subsequent developments, we are of the considered opinion that no further order is required in this civil miscellaneous appeal, as the decree of divorce becomes ineffective. Accordingly, the order dated 30.03.2007 passed in F.C.O.P.No.2749 of 2006 by the First Additional Family Court, Chennai, is set aside.

5. In the result, the civil miscellaneous appeal is allowed.

No costs. Consequently, connected civil miscellaneous petition is closed.

[S.M.K., J.] [M.G.R., J.]

03.03.2017

Index : Yes/No
Internet : Yes/No
TK

To
The First Additional Family Court
Chennai.

S.MANIKUMAR, J.

AND

M.GOVINDARAJ, J.

TK

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