



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.216 of 2017

Jeret Joes, S/o. Russalian, .. Appellant/Petitioner/Petitioner

Vs.

Freeda, D/o. Muthian .. Respondent/Respondent/Respondent

Civil Miscellaneous Appeal filed under Order 43 Rule 1 C.P.C., against fair and decretal order, dated 02.07.2016, passed in I.A.No.358 of 2015 in I.D.O.P.No.61 of 2013, by the learned District Judge Kanyakumari District at Nagercoil.

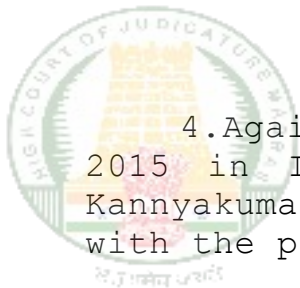
For Appellant	: Mr.K.P.Narayana Kumar
For Respondent	: Mr.R.J.Karthick

ORDER

This Civil Miscellaneous Appeal has been filed against fair and decretal order, dated 02.07.2016, passed in I.A.No.358 of 2015 in I.D.O.P.No.61 of 2013, by the learned District Judge, Kanyakumari District at Nagercoil.

2.The appellant is the husband and the respondent is the wife. According to the appellant, he filed I.D.O.P.No.61 of 2013 before the District Court, Kanyakumari District at Nagercoil, for divorce. The said I.D.O.P. was dismissed for default on 09.12.2014. The petitioner filed I.A.No.358 of 2015 to set aside the order of dismissal and restore the I.D.O.P.

3.According to the appellant, the Counsel, who was engaged by him, died on 27.11.2014. His Clerk Kannan did not inform the death of the Advocate and status of case. Therefore, the petitioner could not appear before the District Court, Kanyakumari District at Nagercoil. Hence, the default is neither willful nor wanton, but due to the reasons stated above. The said application was ordered on 15.06.2016 on condition that the appellant should pay a sum of Rs.5,000/- to the respondent/wife on or before 01.07.2016. The said conditional order was not complied with. Therefore, the said I.A. was dismissed on 02.07.2016.



4. Against the order, dated 02.07.2016, passed in I.A.No.358 of 2015 in I.D.O.P.No.61 of 2013, by the learned District Judge Kanyakumari District at Nagercoil, the appellant has come out with the present Civil Miscellaneous Appeal.

5. The learned counsel for the appellant submitted that the order dated 15.06.2016 was not communicated to the appellant and therefore, he could not pay the cost immediately. Now, he is ready and willing to pay a sum of Rs.10,000/- as cost to the respondent/wife.

6. The learned counsel for the respondent also submitted that the cost to be paid to the wife directly and post the Civil Miscellaneous Appeal for reporting compliance.

7. In view of the abovesaid submissions of the learned counsel for the appellant and the learned counsel for the respondent, the Civil Miscellaneous Appeal is allowed, directing to the appellant to pay a sum of Rs.10,000/- on or before 07.04.2017, to the learned counsel for the respondent to be handed over to the respondent/wife. The order dated 02.07.2016, passed in I.A.No.358 of 2015 in I.D.O.P.No.61 of 2013, by the learned District Judge, Kanyakumari District at Nagercoil, is set aside. No costs.

List the matter on 10.04.2017, for reporting compliance.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The District Judge,
Kanyakumari District at Nagercoil.
+1cc to Mr.K.P.Narayanakumar, Advocate, SR.51267

C.M.A.MD)No.216 of 2017
22.03.2017

sss/smn2

MKV-SKN-SAR 3/3.4.2017/2P-3C



WEB COPY