



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1298 of 2015
and
M.P. (MD) No.1 of 2015

Grace Vinitha

... Appellant

Vs.

Nirmal Jayakumar

@ Vijay Nirmal Pushpanath

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order XLIII Rule (1) (d) of Civil Procedure Code to set aside the fair and decreetal order dated 05.10.2015 made in I.A.No.60 of 2014 in IDOP.No.45 of 2014 on the file of the Principal District Judge, Pudukkottai.

For Appellant

: Mrs.J.Maria Roseline

For Respondent

: Mr.S.Sivathilakar for
Mr.S.Deenadayalan

JUDGMENT

This appeal has been filed questioning the order dated 05.10.2015 made in I.A.No.60 of 2014 in IDOP. No.45 of 2014 on the file of the Principal District Judge, Pudukkottai.

2.The respondent is the husband. The appellant is the wife. The respondent filed a petition for divorce before the Court at Bangalore. The appellant herein had filed a petition before the Principal District Judge, Pudukkottai seeking restitution of conjugal rights. From the counter filed by the respondent in the restitution petition, the appellant came to know that divorce petition had been filed before the Court at Bangalore. Therefore, she moved the Hon'ble Supreme Court seeking transfer. The Hon'ble Supreme Court acceded to the request of the appellant herein and transferred the divorce proceedings from the Bangalore Court to Pudukkottai. In the meanwhile, the appellant herein had been set exparte before the Bangalore Court. So when the case was transferred to Pudukottai she was already set exparte. This necessitated filing of I.A.No.60 of 2014 for setting aside the order setting her exparte.



3.Considering the circumstances, the learned Trial Judge ought to have straightly allowed the I.A. filed for setting aside the order setting her exparte. The learned Trial Judge has chosen to dismiss the I.A on the ground that she was already aware of it and that she has not adduced sufficient cause to explain her non appearance before the Court at Bangalore.

4.The marriage between the parties took place at Chennai. The appellant resides at Pudukkottai and the parties for a while resided together at Pudukkottai. Admittedly, the child was born to the parties and the appellant was bringing him up. The child is hardly four years old. Therefore, the explanation offered by the appellant on the very face of it deserves acceptance. The order dated 05.10.2015 dismissing I.A.No.60 of 2014 is set aside. This appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

1.The Principal District Judge,
Pudukkottai.

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to M/s.J.Maria Roseline, Advocate, SR.No.87327

+One cc to Mr.S.Deenadayalan, Advocate, SR.No.87131

skm

RL/5C/2P/GT/SAR4/29/11/2017

C.M.A. (MD) No.1298 of 2015
and

M.P. (MD) No.1 of 2015