



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2017

CORAM :

WEB COPY

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.R.P. (PD) (MD) No.988 of 2017

Nagarajan

... Petitioner

-vs-

Thangaselvi

... Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the Fair and Decretal Order dated 11.01.2017, passed in I.A.No.178 of 2015 in H.M.O.P No.437 of 2009 on the file of III Additional Sub Court, Madurai.

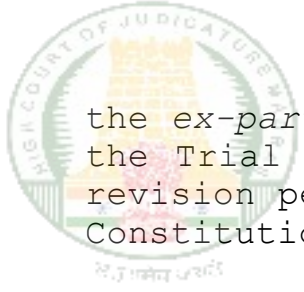
For Petitioner : Mr. S.Pon Senthil Kumaran

ORDER

This Civil Revision Petition is directed against the order passed by the Trial Court allowing the application filed by the respondent to set aside the *ex-parte* order passed in H.M.O.P.No. 437 of 2009 on the file of III Additional Sub Court, Madurai.

2.The short point involved in this case is that, the *ex-parte* decree of divorce passed by the Trial Court on 29.09.2010 was set aside by the Trial Court and proper notice was served to the respondent only on 29.03.2015. When the revision petitioner sent notice to the respondent, she came to know about the *ex-parte* divorce decree and thereafter, she has approached the Court to set aside the *ex-parte* order of divorce.

3.The revision petitioner herein submits that the respondent is a Police Constable, though she was fully aware of the divorce proceedings, she evaded notice. Hence, substituted service was effected by paper publication and *ex-parte* decree was passed on 29.09.2010. Thus, she kept quiet for more than five years but has filed this application suppressing all the facts, as if, she came to know about the divorce proceedings and *ex-parte* decree only on receipt of the notice issued by the revision petitioner. The very conduct of the respondent staying away from the matrimonial home even after the decree of divorce itself is sufficient to show her animus to desert the revision petitioner and there is no purpose in allowing her application to set aside



the ex-parte divorce decree. Without considering the above facts, the Trial Court has allowed her application which has forced the revision petitioner to file this petition under Article 227 of the Constitution of India.

4. In the matrimonial dispute, depriving the opportunity of defending the petition averments may cause grave injustice, therefore, there is no error in the order of the Trial Court in allowing the petition to set aside ex-parte decree. Hence, this Court, without adverting to the merits of the main case, restricts itself with a direction to the Trial Court to dispose of the H.M.O.P No.437 of 2009 by 30.12.2017. The point of animus to desert and other points are open to be canvassed by the revision petitioner before the Trial Court.

5. Accordingly, the Civil Revision Petition is disposed of with the above direction. No Costs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The III Additional Subordinate Judge,
III Additional Sub Court,
Madurai.

+ 1 CC TO Mr.S.PON SENTHIL KUMARAN, ADVOCATE IN SR No. 58053

KM/MR
TE/MMS/SAR-II : 12/06/2017 : 2P/3C

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