

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.01.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.109 of 2016

K.Shanthi ... Appellant/Respondent
Vs.

N.Gunasekaran ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 28 of the Hindu Marriage Act against the order and decree of the III Additional District Judge, Poonamallee dated 29.04.2014 made in H.M.O.P.No.110 of 2007.

For Appellant : Mr.V.Sundararaman
for M/s.A.Laxmi Raj Rathnam
For Respondent : Mr.N.R.Anantha Ramakrishnan

J U D G M E N T

Challenging the order passed in H.M.O.P.No.110 of 007 on the file of the III Additional District Judge, Poonamallee, the appellant, who is the wife of the respondent, has filed the above appeal.

2.The respondent filed the H.M.O.P.No.110 of 2007 for divorce on the ground of cruelty. The appellant/wife filed her counter and was contesting the petition.

3.When the Original Petition was posted for trial, since the appellant failed to appear before the trial Court, the evidence on the side of the appellant was closed and based on the evidence let in by the respondent/ husband, the trial Court granted a decree for divorce on the ground of cruelty.

4.On a perusal of the order passed by the trial Court, it could be seen that the Original Petition was listed for trial on 08.04.2014, 17.04.2014 and 21.04.2014, however, the appellant failed to let in any evidence on those days. Hence, the evidence on the side of the appellant was closed on 21.04.2014 and the matter was adjourned to 22.04.2014 for arguments. Even the respondent was not cross examined by the appellant. Therefore, from the above, it is clear that the decree for divorce was granted in favour of the respondent without giving an opportunity to the appellant to let in evidence on her side.

5.It is also brought to the notice of this Court by the learned counsel for the appellant that the appellant had filed applications to recall and reopen the evidence. However, the applications were returned by the trial Court for the reason that the applications were filed only on the date of pronouncement of the order.

6.The learned counsel appearing for the appellant submitted that in the interest of justice, an opportunity may be given to the appellant to let in evidence and the trial Court may also be directed to complete the proceedings within a time frame to be fixed by this Court.

7.Mr.N.R.Anantha Ramakrishnan, learned counsel appearing for the respondent fairly submitted that since the appellant has not let in any evidence, a final opportunity may be given to her to let in evidence and the trial Court may be directed to complete the proceedings within a short time frame.

8.In view of the submissions made by the learned counsel on either side, since the appellant has not let in any evidence and has also not cross examined the respondent before the trial Court, in order to give one more final opportunity to the appellant, I am inclined to set aside the fair and decreetal order passed by the trial Court. Accordingly, the fair and decreetal order passed in H.M.O.P.No.110 of 2007 are set aside and the matter is remanded to the III Additional District Judge, Poonamallee for fresh consideration. The parties are directed to let in additional oral and documentary evidences in support of their respective cases. The III Additional District Judge, Poonamallee is directed to dispose of the matter within six weeks from the date of receipt of a copy of this judgment. The parties are directed to complete the trial without seeking for unnecessary adjournments.

9.The learned counsel for the appellant has also given an undertaking that the appellant would complete her evidence within fifteen (15) days from the date of starting of the evidence on her side.

10.With these observations, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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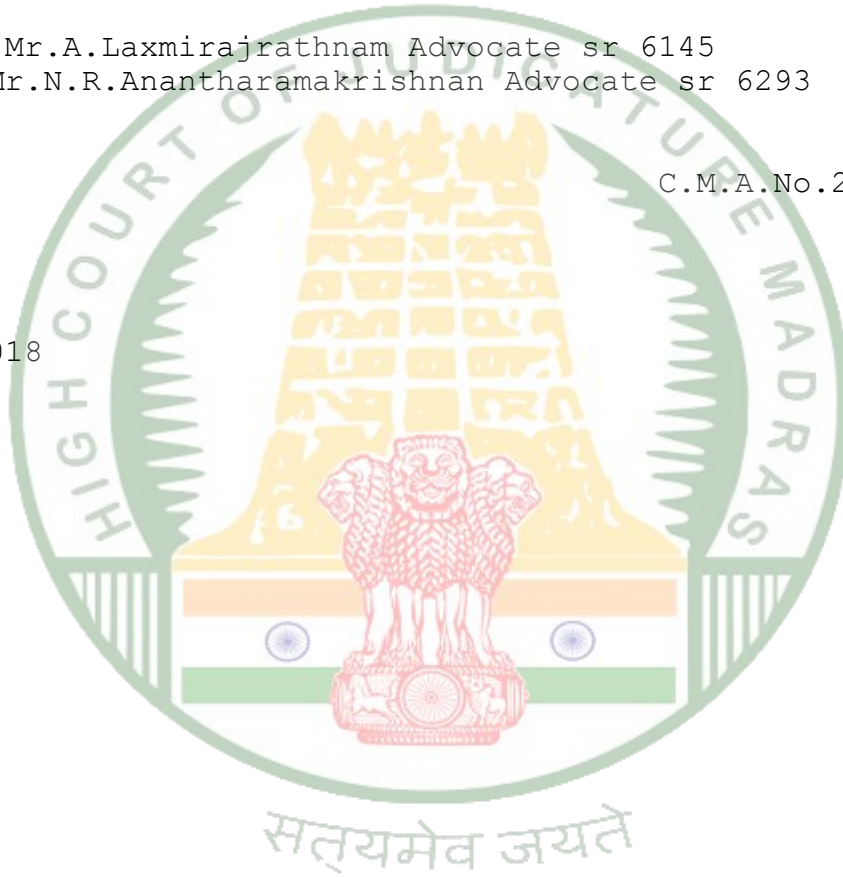
1.The III Additional District Judge,
Poonamallee.
(along with records)

2.The Section Officer
VR Section
High Court, Madras-600 104 (+2 copies)
(To Send the Lower Court record to the court below
on or before 02/02/2018)

+2 ccs to Mr.A.Laxmirajrathnam Advocate sr 6145
+1 cc to Mr.N.R.Anantharamakrishnan Advocate sr 6293

C.M.A.No.2751 of 2016

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