

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.1831 OF 2018

B.Roshini : Appellant

versus

R.Arun Kumar : Respondent

PRAYER: Appeal filed against the fair and decretal order dated 9.3.2018 in FCOP No.214 of 2015 on the file of Family Court, Vellore.

For appellant : Mr.Arun Anbumani

For respondent : Mr.G.Jayachandran

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

This civil miscellaneous appeal is filed against the order dated 9 March 2018 in FCOP No.214 of 2015, on the file of the Family Court, Vellore, dissolving the marriage between the parties by a decree of divorce.

2. The respondent filed an original application in FCOP No.214 of 2015 before the Family Court, Vellore, praying for a decree of divorce on the ground of cruelty and desertion. The original petition was resisted by the appellant by filing counter affidavit.

3. The trial Court after recording the evidence on the side of the respondent, posted the original petition on 5 February 2018 for adducing evidence on the side of the appellant. Since there was no representation on the side of the appellant, the original petition was adjourned to be posted on 8 February 2018. Since there was no representation on behalf of the appellant, the learned trial Judge closed the evidence on her side on 8 February 2018, and posted the matter for orders on 15 February 2018. The learned counsel for the respondent made submissions on

15 February 2018. There was no representation on behalf of the appellant. The learned Judge therefore reserved the matter for orders, and more particularly to pronounce orders on 9 March 2018. Accordingly, a decree of divorce was passed on 9 March 2018. The decree is under appeal at the instance of the appellant.

4. We have heard the learned counsel for the appellant. We have also heard the learned counsel for the respondent.

5. There is no dispute that there was no representation on the side of the appellant on 5 February 2018. The learned trial Judge therefore posted the matter for her evidence on 8 February 2018. Since there was no attempt made by the appellant to cross examine the respondent, the matter was closed. Thereafter, the learned trial Judge heard the arguments on the side of the respondent.

6. The core question is whether the learned trial Judge was correct in passing a decree without following the procedure contemplated under Rule 2 of Order 17 of the Code of Civil Procedure, (hereinafter referred to as "the CPC").

7. Since the appellant was absent on the day on which the matter was posted for evidence, the case would attract the provisions of Order 17 Rule 2 of CPC. In case, the said rule is attracted, in view of the failure on the part of the parties to appear, the Court was bound to follow Order 9 of CPC.

8. The trial Court in the subject case proceeded to hear the matter without following the provisions of Order 9 CPC. The Trial Court has taken up the burden of considering the merits of the matter without there being anything on record on behalf of the appellant, who was the respondent in the original petition.

9. The proceedings before the trial Court was under the provisions of the Hindu Marriage Act. The trial Court was not expected to arrive at a decision without the active association of the appellant. It is true that the trial Court is empowered to pass a decree after setting the appellant exparte, in case a situation has arisen for taking such a course. Even then, the Court has to follow the provisions of the Code of Civil Procedure.

10. The trial Court in the subject case adjudicated the matter on merits without recording the evidence of the appellant. The adjudication was made on the basis of the evidence adduced by the respondent. Since the trial Court has not followed the mandatory provisions of CPC before decreeing the suit, necessarily, the appellant must succeed. We therefore

set aside the judgment and decree dated 9 March 2018 in FCOP No.214 of 2015.

11. The original petition in FCOP No.214 of 2015 is restored to file. The learned Judge, Family Court, Vellore is directed to give reasonable opportunity to the appellant to adduce evidence on her side. The respondent should also be given reasonable time for cross examination. The trial Court, thereafter, shall pass a judgment and decree on merits, uninfluenced by any of the observations contained in the judgment dated 9 March 2018.

12. The Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, C.M.P.No.14153 of 2018 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Family Court, Vellore.

+1cc to Mr.G.Jayachandran, Advocate Sr.64124

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C.M.A.No.1831 OF 2018

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