

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-06-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Civil Miscellaneous Appeal No. 2050 of 2016

Sudan Shanmugasundaram

.. Appellant

Versus

Vennila

... Respondent

Appeal filed under Order XLIII Rule 1 (d) read with Section 104 of the Code of Civil Procedure to set aside the Decree and Judgment dated 07.04.2016 passed in I.A. No. 80 of 2014 in O.P. No. 116 of 2013 on the file of II Additional Principal Family Court, Chennai

For Appellant : Mr. C.D. Sugumar

For Respondent : Mr. T.C.S. Raja Chockalingam

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

This appeal is filed by the appellant questioning the correctness and/or validity of the Decree and Judgment dated 07.04.2016 passed in I.A. No. 80 of 2014 in H.M.O.P. No. 116 of 2013 on the file of II Additional Principal Family Court, Madras. By the said Judgment dated 07.04.2016, the Family Court dismissed the application filed by the appellant herein to set aside the exparte decree dated 19.12.2013 passed in HMOP No. 116 of 2013 for his non-appearance.

2. The respondent/wife has filed O.P. No. 116 of 2013 before the Family Court, Chennai under Section 12 (1) (c) and Section 25 of The Hindu Marriage Act praying to dissolve the marriage solemnised between her and the appellant on 09.12.2010 on the ground of non-consummation of the marriage and for a direction to direct the appellant/husband to pay a sum of Rs.50 lakhs to her towards permanent alimony.

3. According to the respondent, the marriage between her and the appellant was solemnised on 09.12.2010 at

Rathinavinayagar Koil, R.S. Puram, Coimbatore as per Hindu rites and customs and the marriage was also registered with the competent registering authority on the same day namely 09.12.2010. Thereafter, on 10.12.2010, a marriage reception was conducted at Ramakrishna Thirumana Mandapam, Coimbatore. At the time of marriage, according to the respondent, her parents have offered 61 sovereigns of gold ornaments to her and 11 sovereign of jewels to the appellant besides incurring the entire marriage expenses to the tune of Rs.35 lakhs. That apart, household articles worth about Rs.5 lakhs was given at the time of marriage. It is the contention of the respondent that soon after the marriage, the appellant and the respondent lived at the house of the appellant. The respondent stepped into the matrimonial home with lot of hopes and aspirations to lead a blissful life. However, to the shock of the respondent, the moment when she stepped into the matrimonial home, her mother-in-law and sister-in-law have scolded her by stating that the marriage was not performed befitting their status. During such verbal assault, the appellant remained a silent spectator. Further, during the nuptial night, the appellant did not exhibit any zest or interest to have sexual intercourse with her or even prepared to chat with the respondent. When questioned, the appellant replied that they should not consummate the marriage in India and that they could commence it in United States of America where they were to settle down.

4. According to the respondent, the appellant is employed as a Software Engineer in America and therefore, after marriage, the respondent and the appellant intended to proceed to United States of America on 28.12.2010. According to the respondent, to meet the travel expenses and to set up a separate house at United States of America, the appellant demanded a sum of Rs.6 lakhs from the respondent and with great difficulty, the father of the respondent mobilised a sum of Rs.6 lakhs and paid it to the appellant. Further, at the time of leaving India to United States of America, as instructed by her mother-in-law, the respondent handed over all the jewels presented to her at the time of marriage to her mother-in-law. Even while staying at United States of America, the appellant did not discharge his matrimonial obligation towards the respondent and she was treated like a servant maid. The appellant slept in his room while the respondent was asked to sleep in the sofa in the drawing room. Thus, even during the stay at United States of America, the marriage was not consummated. On one occasion, when the respondent questioned the attitude of the appellant in ignoring her, the appellant replied that he married her only at the instigation of his mother and sister and that she has to live like a servant in the house. In effect, the respondent was made to do all menial jobs and she was treated with utmost cruelty. Further, the appellant found fault with the respondent for each and every trivial issues and thereby made her stay in the matrimonial home a nightmare. While so, the respondent's

mother fell sick and the respondent sought the permission of the appellant to go over to India. Even though the appellant permitted the respondent to go to India, he warned the respondent not to divulge anything that had happened in the matrimonial home to any one. Accordingly, on 09.03.2011, the respondent left United States of America and reached India. When the respondent was staying in her parents house, she came to know through her relatives that the appellant is taking steps to file a petition for divorce. When the respondent caused enquiry with respect to the same with her mother-in-law, she also confirmed the same. On 02.11.2012, the mother and sister of the appellant came to the parents house of the respondent and at that time, the respondent informed them about the non-consummation of the marriage. Instead of causing enquiries in respect of the same with the appellant, the mother and sister of the appellant demanded a sum of Rs.10 lakhs to be paid to them as a condition precedent for re-union with the appellant, failing which they have asserted that the appellant will never come down to India to take back the respondent with him and by saying so, they have left their home immediately. When the father of the respondent called the appellant over phone, he had categorically asserted that he is not ready to live with the respondent any longer without assigning any reasons. According to the respondent, he stayed with the appellant only for a period of two months and even during such short stay, her matrimonial life was not peaceful and blissful. The life of the respondent has been ruined due to the rigid and adamant attitude of the appellant. In such circumstances, the respondent has filed the Original Petition for dissolution of the marriage on the grounds of non-consummation of the marriage and for a direction to the appellant to pay Rs.50 lakhs towards permanent alimony.

5. The Family Court issued notice to the respondent, however, the respondent did not appear in person or through a pleader. Therefore, the Family Court proceeded to pass an exparte decree and accordingly, on 09.12.2013, the appellant was called absent and set exparte. Thereafter, the respondent filed her proof affidavit on 13.12.2013. The respondent also examined herself as PW1 and marked four documents - Exs. P1 to P4. The Family Court, after considering the averments made in the Original Petition, the oral evidence of PW1 and Exs. P1 to P4, passed an exparte decree dated 19.12.2013, thereby dissolving the marriage solemnised between the appellant and the respondent on 09.02.2010 besides directing the appellant to pay a sum of Rs.25,00,000/- towards permanent alimony to the respondent.

6. On 08.01.2014, the appellant filed an application in I.A. No. 80 of 2014 in HMOP No. 116 of 2013 contending that he is a resident of United States of America and working there, hence, he could not appear before the Family Court to contest

the above Original Petition filed by the respondent for dissolution of the marriage. It was further stated that he had executed a power of attorney dated 09.05.2013 appointing his brother-in-law to contest the above Original Petition on his behalf and the power of attorney also filed an application in I.A. No. 2683 of 2013 under Order III Rule 2 (a) of the Civil Procedure Code seeking permission to appear in the above Original Petition on his behalf, however, the said application was dismissed on 07.10.2013 and the Original Petition was posted for hearing on 09.12.2013. On 09.12.2013, the power of attorney of the appellant filed a memo stating that he has moved a Civil Revision Petition before this Court against the order of dismissal passed in I.A. No. 2683 of 2013, however, the memo was also rejected by this Court. In such circumstances, the appellant has filed the aforesaid I.A. No. 80 of 2014 to set aside the exparte decree dated 19.12.2013 passed in HMOP No. 116 of 2013 so as to enable him to contest the Original Petition on merits.

7. The application in I.A. No. 80 of 2014 was opposed by the respondent by filing a counter. According to the respondent, the summons in the above Original Petition was served on the appellant on 04.03.2013 and thereafter, several adjournments were granted to enable the appellant to contest the Original Petition. However, for the reasons best known, the appellant did not avail those opportunities to contest the Original Petition. The appellant was not diligent enough in contesting the Original Petition. The present petition has been filed by the appellant only to frustrate and harass the respondent by dragging on the matrimonial proceedings and therefore, she prayed for dismissal of the application.

8. The Family Court, upon considering the rival submissions, dismissed the application filed by the appellant to set aside the exparte decree and refused to restore the Original Petition on the ground that the application has been filed only to drag on the matrimonial proceedings.

9. The learned counsel appearing for the appellant would only contend that the respondent, in the Original Petition, has made several allegations against the appellant, while so, the Family Court ought to have given an opportunity to the appellant to contest the Original Petition on merits. It is further stated that the appellant is working in United States of America and he also executed a power of attorney deed dated 09.05.2013 appointing his brother-in-law as his power of attorney agent to contest the Original Petition. The power of attorney agent has also filed an application in I.A. No. 2883 of 2013 to recognise him as the power of attorney agent of the appellant and to permit him to contest the suit on merits. However, the Family Court, without considering the diligent steps taken by the

appellant to contest the Original Petition, has dismissed the application filed by him to set aside the exparte decree. The learned counsel appearing for the appellant would therefore contend that an opportunity be given to the appellant to contest the Original Petition on merits by setting aside the Order of the Family Court.

10. Per contra, the learned counsel for the respondent would contend that the appellant was not diligent in contesting the Original Petition filed by the respondent. It is not as though sufficient opportunities were not given to the appellant. Even though the Original Petition was adjourned on several occasion, to enable the appellant to contest the Original Petition, he did not avail those opportunities. The Family Court, considering the above aspects, has rightly dismissed the application to set aside the exparte decree and it calls for no interference by this Court.

11. We have heard the counsel for both sides and perused the materials placed on record. Irrespective of the submissions of the counsel for both sides, we feel that the Family Court ought to have granted an opportunity to the appellant to contest the Original Petition especially when the averments made in the Original Petition filed by the respondent are serious in nature and they have to be met by the appellant by filing a counter affidavit. Further, the appellant also executed a power of attorney deed dated 09.05.2013 appointing his brother-in-law as his power of attorney agent to contest the Original Petition. The power of attorney agent has also filed an application in I.A. No. 2883 of 2013 to recognise him as the power of attorney agent and to contest the Original Petition on behalf of the appellant. When the application was dismissed, the power of attorney agent has also filed a Civil Revision Petition before this Court questioning the correctness of the order dated 07.10.2013 passed in I.A. No. 2883 of 2013. While so, it cannot be said that the appellant was not diligent in contesting the Original Petition. In such view of the matter, we are of the view that the Family Court ought to have given sufficient opportunity to the appellant to contest the Original Petition.

12. In the result, the Decree and Judgment dated 07.04.2016 passed in I.A. No. 80 of 2014 in H.M.O.P. No. 116 of 2013 on the file of II Additional Principal Family Court, Madras is set aside. The Civil Miscellaneous Appeal stands allowed. No costs. The Family Court is directed to take up H.M.O.P. No. 116 of 2013 filed by the respondent for hearing on a day-to-day basis, afford an opportunity to both sides and dispose of the Original Petition on merits and in accordance with law on or before 31.12.2018. The time schedule indicated in this Judgment shall be scrupulously followed by the Family Court. Both the appellant and the respondent shall appear before the learned II

Additional Principal Family Court, Chennai on 01.08.2018, The appellant and the respondent are also further directed to extend their cooperation to the Family Court to dispose of the Original Petition within the time frame indicated above. Consequently, connected CMP No. 14994 of 2016 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer
II Additional Principal Family Court
Chennai

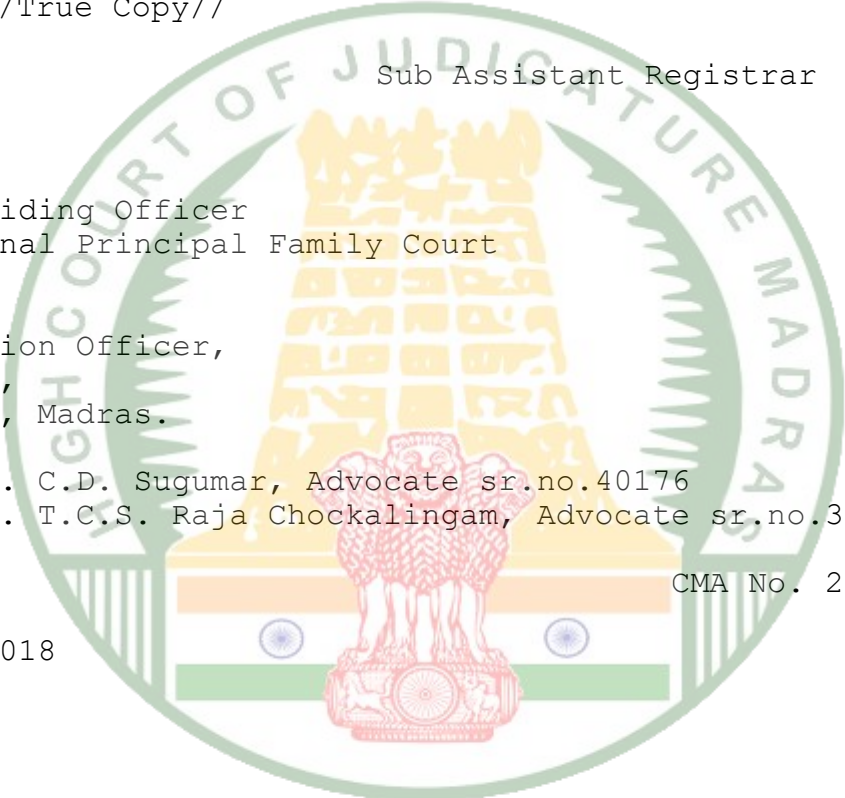
2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr. C.D. Sugumar, Advocate sr.no.40176

+1cc to Mr. T.C.S. Raja Chockalingam, Advocate sr.no.39385

CMA No. 2050 of 2016

nr 10/07/2018



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