

IN THE HIGH COURT OF JUDICATURE AT MADRAS

24.01.2018

Coram

The Hon'ble Mr. Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

C.M.A.No.470 of 2016
and
C.M.P.No.3622 of 2016

R.Elango ... Appellant
Vs
G.Vijayalakshmi ... Respondent

Civil Miscellaneous Appeal preferred against the order dated 11.01.2016, passed in unnumbered I.A.No.....2016 in F.C.HMOP.No.15 of 2015, on the file of the Family Court, Dharmapuri.

For Appellant ... Mr.R.Krishna Prasad
for M/s.Saravabhuman Associates
For Respondent ... Mr.G.Saravanakumar for
Mr.Vijendran

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J.)

This Civil Miscellaneous Appeal has been directed against the order dated 11.01.2016, passed in I.A.No.....of 2016 in FC.HMOP.No.15 of 2015, by the Family Court, Dharmapuri.

2.The respondent herein, as petitioner, has filed FC.HMOP.No.15 of 2015, on the file of the trial Court for restitution of conjugal rights, wherein, the present appellant has been shown as sole respondent.

3.During pendency of the same, the appellant has remained ex-parte and due to that an ex-parte decree has been passed on 8.1.2016 and in order to set aside the same, I.A.No.....of 2016 has been filed under Order 9 Rule 13 of the Code of Civil Procedure, 1908. The trial Court, even without considering it, has rejected the same by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

4.The learned counsel appearing for the

appellant/petitioner has contended that the trial Court, even without giving sufficient opportunity to the appellant/petitioner for his non-appearance, has erroneously rejected I.A.No.....of 2016 and therefore, the rejection order passed by the trial Court is liable to be set aside.

5.The learned counsel appearing for the respondent has contended that from 10.09.2015 onwards, the appellant/petitioner has failed to make his appearance in FC.HMOP.No.15 of 2015. Under the said circumstances, the trial Court has rightly rejected I.A.No.....of 2016 and therefore, the rejection order passed by the trial Court does not call for any interference.

6.It is an admitted fact that the respondent/wife, as petitioner, has filed FC.HMOP No.15 of 2015, on the file of the trial Court, for getting a decree of restitution of conjugal rights. It is also equally an admitted fact that the appellant/petitioner, as petitioner, has filed another O.P. for getting divorce.

7.It is seen from the records that in FC.HMOP No.15 of 2015, an ex-parte decree has been passed on 8.01.2016 and for the purpose of setting aside the same, the present petition has been filed in I.A.No.....of 2016 under Order 9 Rule 13 of Code of Civil Procedure, 1908.

8.The trial Court, even without numbering it and even without giving sufficient opportunity to both parties, has erroneously rejected the same. The approach made by the trial Court is totally unjust.

9.Considering the fact that sufficient opportunity must be given to both parties, the rejection order passed by the trial Court in I.A.No.....of 2016 in FC.HMOP.No.15 of 2015 is liable to set aside.

In fine, this Civil Miscellaneous Appeal is allowed without costs. The rejection order passed in I.A.No.....of 2016 in FC.HMOP.No.15 of 2015, by the trial Court is set aside. The trial Court is directed to number I.A.No.....of 2016 and after giving sufficient opportunity to both parties, dispose of the same on merits. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

msk

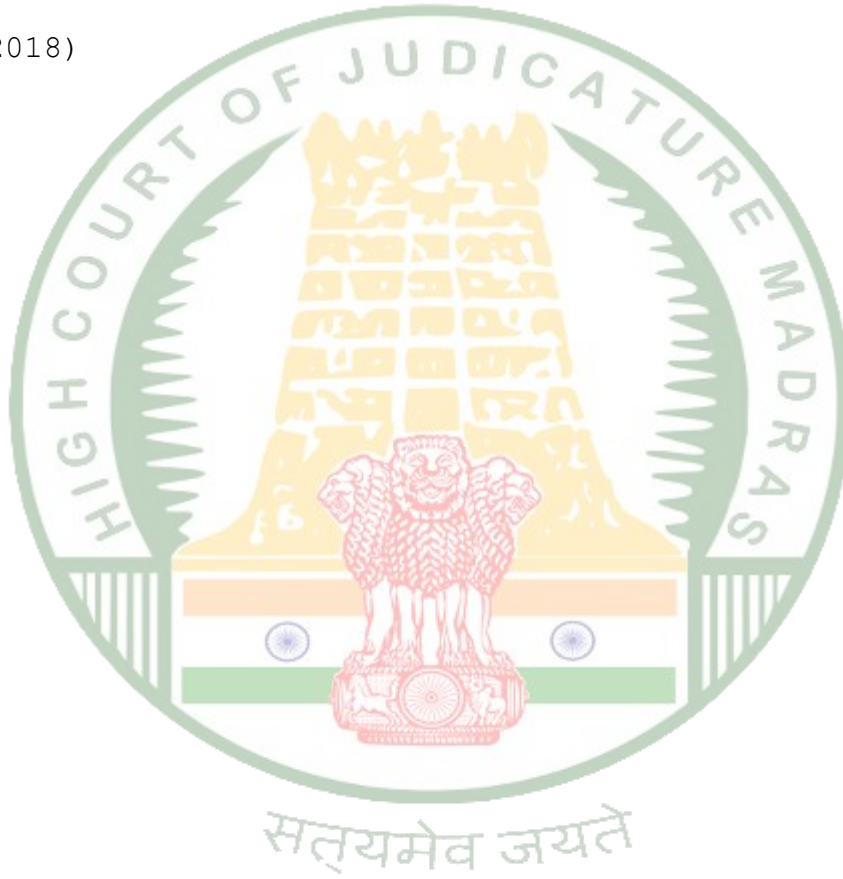
To

The Judge,
Family Court,
Dharmapuri.

+1cc to Mr.Sarvabhuman Associates, Advocate SR.No.5578
+1cc to Mr.P.Vijendran, Advocate SR.No.5969

C.M.A.No.470 of 2016

MP (CO)
GN (09/02/2018)



WEB COPY