

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2018

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
AND
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.7 of 2018

M.Adhiyaman ... Appellant/Appellant

Vs

Sakthimozhi ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 19[1] of the Family Courts Act, 1984, against the order dated 23.03.2017 passed by the Family Court, Dharmapuri, in F.C.I.A.No.30 of 2017 in F.C.H.M.O.P.No.73 of 2016.

For Petitioner : Mr.D.Rameshkumar

For Respondent : Ms.E.Udayasankari

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM., J.]

This Civil Miscellaneous Appeal is directed against the order dated 23.03.2017, passed in F.C.I.A.No.30 of 2017 in F.C.H.M.O.P.No.73 of 2016, by the Family Court, Dharmapuri.

2.The appellant herein, as petitioner, has filed F.C.H.M.O.P.No.73 of 2016, on the file of the trial Court, for getting a decree of divorce, wherein, the present respondent has been arrayed as sole respondent.

3.During pendency of the same, since the petitioner has failed to make his appearance, the same has been dismissed and in order to set aside the dismissal order, F.C.I.A.No.30 of 2017 has been filed, on the file of the trial Court under Order IX Rule 9 of the Code of Civil Procedure, 1908. On the date of hearing, the petitioner has failed to make his appearance and therefore, F.C.I.A.No.30 of 2017 has been dismissed, by way of passing the impugned order.

4.The learned counsel appearing for the appellant/petitioner has contended to the effect that the appellant/petitioner has been suffering from liver transplantation and due to that, he has not been able to make his appearance in F.C.I.A.No.30 of 2017 and to that effect, a representation has been made in the trial Court, but the trial Court has not accepted the same.

5.Considering the fact that F.C.H.M.O.P.No.73 of 2016 has been filed for getting relief of divorce and also considering F.C.I.A.No.30 of 2017 has been dismissed due to non-appearance of the petitioner and also considering that the appellant/petitioner has been suffering from liver transplantation, this Court is of the view to set aside the dismissal order passed in F.C.I.A.No.30 of 2017 and remit the matter to the trial Court for producing relevant records.

In fine, this Civil Miscellaneous Appeal is allowed without costs. The order passed in F.C.I.A.No.30 of 2017 in F.C.H.M.O.P.No.73 of 2016 by the trial Court is set aside and the petition filed in F.C.I.A.No.30 of 2017 in F.C.H.M.O.P.No.73 of 2016 is remitted to the file of the trial Court. The appellant/petitioner is directed to file relevant documents for the purpose of proving his non-appearance in F.C.H.M.O.P.No.73 of 2016. The trial Court is directed to dispose of F.C.I.A.No.30 of 2017 as early as possible.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Family Court,
Dharmapuri.

+1cc to Mr.D.Rameshkumar, Advocate, S.R.No.12596

C.M.A.No.7 of 2018

KJ(CO)
CS/07/03/18