

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**Civil Revision Petition (PD) No.328 of 2018**
and
C.M.P.No.1807 of 2018

G.S.Vanitha@Radhika

... Petitioner

..Vs..

K.S.Dhayaa Shankar

... Respondent

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India, against the fair and decretal order passed in I.A.No.2808 of 2017 in O.P.No.3488 of 2013 on 10.01.2018 on the file of the V Addl.Family Court, Chennai.

For petitioner : Mr.K.S.Kumar

ORDER

Challenging the fair and decretal order passed by the V Addl.Family Court, Chennai in I.A.No.2808 of 2017 in O.P.No.3488 of 2013, dated 10.01.2018, the present revision petition has been filed.

2. According to the petitioner, the respondent has filed O.P.No.3488 of 2013, seeking divorce against the petitioner. The said O.P was filed only as a counter blast to the Maintenance Case which was filed by the respondent as early as in the year 2012. Even before filing the above O.P for divorce, the respondent filed O.P.No.960 of 2012 seeking Restitution of Conjugal Rights. Pending the O.P for Restitution of Conjugal Rights, the respondent filed the above O.P for divorce.

3. On 11.10.2017, the petitioner came to the Court to attend the hearing. By the time the petitioner reached the Court campus, it was 10.20a.m and there was a long queue for getting the entry pass. It took nearly 35 minutes to get the entry pass. By the time the petitioner reached the Court, her case was called and passed over. Then, she went to her Advocate's chamber to sign a petition and affidavit and thereafter, came back to Court by around 12.30 hours and found the case adjourned to 01.11.2017.

4. It is further stated that on 12.10.2017, the petitioner has got information through her advocate that in the above case she was set exparte on 11.10.2017 for non-appearance. On that date she had appeared before the Court

at 12.30 hours. Even though the case was kept passed over on the basis of the representation made by the counsel assisting her, before 12.30 hours, the petitioner was called absent and set exparte,

5. According to the petitioner, the petitioner has filed an application under Order 9 Rule 7 of C.P.C to set aside the exparte order dated 11.10.2017 and the aforesaid application was allowed on payment of cost of Rs.5,000/- to the respondent. But, the petitioner was not in a position to pay the said cost. Therefore, the present C.R.P has been filed by the petitioner before this Court.

6. Heard the learned counsel for the petitioner and perused the records.

7. The Court below after considering the reasons stated in the affidavit and taking into consideration the facts and circumstances of this case and in view of, an opportunity shall be granted to the petitioner, allowed the application by imposing cost of Rs.5,000/-. It is open to the petitioner, to file an application before the Court below, to seek modification of cost, if so advised, permissible under law. In such circumstances, the order of the Court does not warrant any interference by this Court and to seek modification of the said cost.

8. With the above observation, this Civil Revision Petition is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

30.01.2018

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To

The V Addl.Family Court, Chennai.



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D.KRISHNAKUMAR, J.,

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