

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.737 of 2018
and
CMP.No.3775 of 2018

N.Mohamed Umar Farook

.. Petitioner

Vs

A.Shama Kausar Jabeen

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 12.01.2018 in IA.No.2875 of 2017 in OP.No.2140 of 2017 passed by the Hon'ble V Additional Principal Judge, Family Court, Chennai.

For Petitioner : Mr.R.Vijayaraghaven

For Respondent : M/s.S.Anil Sandeep

ORDER

According to the revision petitioner, the respondent has filed a petition in OP.No.2140 of 2017 for divorce and suit in OS.No.119 of 2017 for permanent injunction against the petitioner. In the aforesaid OP, the revision petitioner has filed an application in IA.No.2875 of 2017 under Order 9 Rule 7 of Civil Procedure Code to set aside the exparte order dated 01.11.2017. The court below dismissed the said application by holding that the revision petitioner has furnished the incorrect particulars in the affidavit. Therefore, the said application was dismissed. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. According to the learned counsel for the revision petitioner, on 18.09.2017, the revision petitioner was present in the court, only on 01.11.2017, exparte order was passed by the court below without considering the aforesaid reasons stated in the affidavit as well as the contention of the revision petitioner and erroneously dismissed the said application.

3. The learned counsel for the respondent would submit that the court below has rightly dismissed the said application. The revision petitioner has not disclosed the correct fact before the court below. The exparte order was passed on 18.09.2017. The said reasons stated in the affidavit are totally false. Therefore, the court below has rightly dismissed the said application.

4. On perusal of the records filed in the typed set of papers by the revision petitioner, the trial court has called the suit and was set exparte and posted exparte evidence on 20.10.2017. On perusal of the order dated 01.11.2017, the court below recorded as exparte evidence and proof affidavit filed by PW1 and posted on 12.01.2018. On that day, the instant application has been dismissed, by providing an opportunity to the revision petitioner, the impugned order in IA.No.2875 of 2017 is liable to be set aside and remanded to the court below to decide the issue afresh, with observation, the revision petitioner has to satisfy the court below by adducing necessary oral and documentary evidence to prove his bonafide for non-appearance of the petitioner before the trial court on the hearing date.

5. In view of the above, the Civil Revision Petition is allowed and the order passed in IA.No.2875 of 2017 is set aside, and remanded to the Family Court to dispose of the above application on merits and in accordance with law on or before 30.04.2018. Consequently, the connected miscellaneous petition is closed. No costs.

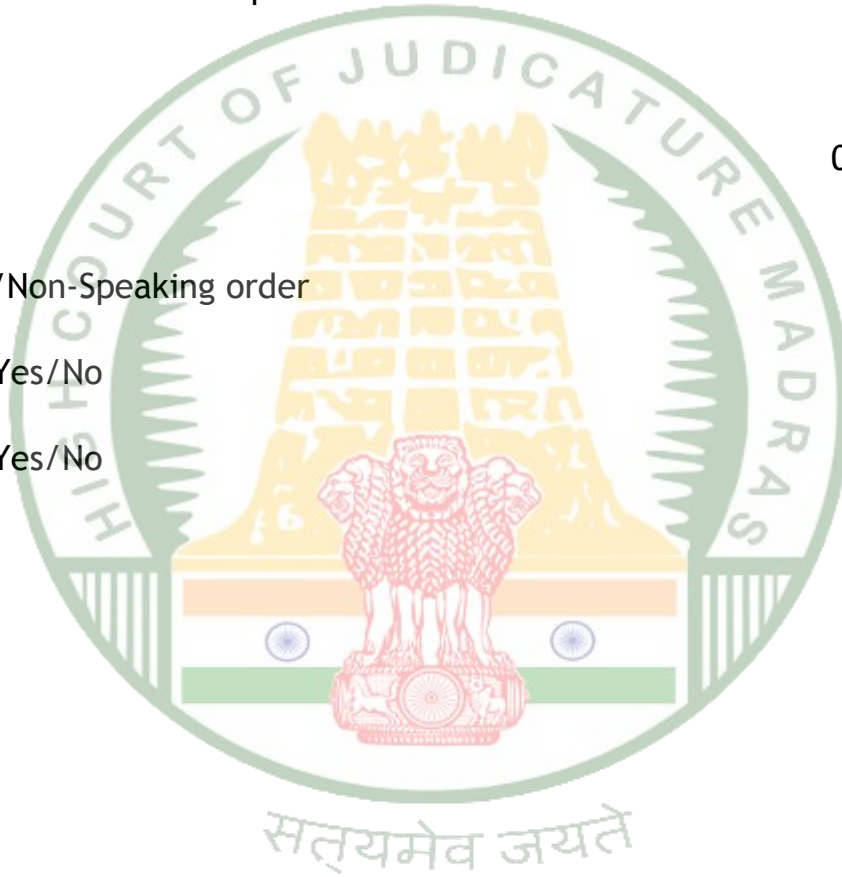
05.03.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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To

The V Additional Principal Judge,
Family Court,
Chennai.



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D. KRISHNAKUMAR J.,

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