



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.08.2018
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD).No.243 of 2016

WEB COPY

Subbulakshmi ... Petitioner/Petitioner/
Respondent
Vs.

Udhayakumar ... Respondent/Respondent/
Petitioner

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order dated 24.11.2015 passed in I.A.No.52 of 2015 in H.M.O.P.No.61 of 2013 on the file of the Sub Court, Valliyoor, by allowing this Civil Revision petition.

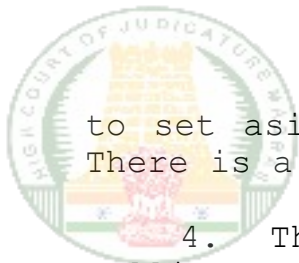
For Petitioner : Mr.V.Meenakshisundaram
for Mr.D.Nallathambi
For Respondent : Mr.T.Selvakumaran

ORDER

The respondent herein filed H.M.O.P.No.61 of 2013 on the file of the Subordinate Court, Valliyoor, for dissolving his marriage with the petitioner herein. The petitioner had allowed the said H.M.O.P., to be decreed ex-parte. This was on 09.12.2014. But then, she filed an application for setting aside the same within time. The said application was numbered as I.A.No.52 of 2015. The set aside petition was filed under Order 9 Rule 13 of C.P.C. The Court below dismissed the said application by holding that the remedy open to the petitioner herein is to file an appeal against the said ex-parte decree in terms of Section 28 of Hindu Marriage Act, 1955. Questioning the correctness of the said order, this Civil Revision petition has been filed.

2. Heard the learned counsel on either side.

3. As rightly pointed out by the learned counsel for the Revision petitioner, the Madras High Court in the decision reported in 1992 (1) M.L.J. 595 (Sumitra bai V. Shyamsundar Sah) has held that since Section 21 of the Hindu Marriage Act makes the provisions of C.P.C., applicable to the proceedings under the Hindu Marriage Act, power under Order 9 Rule 13 of C.P.C., is very much available. The learned trial Judge was terribly wrong in holding that the petition filed under Order 9 Rule 13 of C.P.C., is not maintainable



to set aside the order passed under the Hindu Marriage Act, 1955. There is a complete misdirection in law.

4. The order passed by the learned Subordinate Judge, Valliyoor, in I.A.No.52 of 2015 in H.M.O.P.No.61 of 2013, dated 24.11.2015, is set aside. The Civil Revision petition stands allowed, accordingly.

5. The H.M.O.P.No.61 of 2013 has to be restored to file and disposed of on merits.

6. At this stage, the learned counsel for the respondent submits that a settlement was arrived at between the parties before the Lok Adhalat. If that be so, the proceedings shall be disposed of in terms of Lok Adhalat award that has been passed. No costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Subordinate Judge,
Valliyoor.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. **(2 copies)**

+1CC to Mr.D.Nallathambi, Advocate, SR.No. 79029
+1CC to Mr.T.Selvakumaran, Advocate, SR.No.79162

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