

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1585 & 1586 of 2008

and

M.P.Nos.1(2) of 2008

Ilamathi ... Appellant in both the C.M.As

Vs.

Murugesan ... Respondent in both the C.M.As

Civil Miscellaneous Appeals are filed under Section 28(1) of the Hindu Marriage Act read with Section 104 of the Civil Procedure Code, against the orders dated 03.04.2008 made in I.A.No.1414 of 2007 in O.S.No.2 of 2006 and in I.A.No.1415 of 2007 in M.O.P.No.98 of 2006 on the file of the Family Court, Puducherry.

For Appellant : Mr.V.Raghavachari

For Respondent : No Appearance

Judgment

These Civil Miscellaneous Appeals have been filed challenging the orders dated 03.04.2008 made in I.A.No.1414 of 2007 in O.S.No.2 of 2006 and in I.A.No.1415 of 2007 in M.O.P.No.98 of 2006 on the file of the Family Court, Puducherry.

2. The case of the appellant is that she filed a suit in O.S.No.2 of 2006 before the Family Court, Pondicherry for enhancement of maintenance, whereas the respondent filed a petition in M.O.P.No.98 of 2006 before the same Court for dissolution of marriage solemnized between himself and the petitioner on 11.10.1987. Both the cases came up for hearing on 13.09.2007, but since the petitioner was absent on the said day, an exparte order was passed against her in both the cases. Aggrieved by the orders, she filed restoration applications in I.A.No.1414 of 2007 in O.S.No.2 of 2006 and I.A.No.1415 of 2007 in M.O.P.No.98 of 2006 before the Family Court, Puducherry, but both the applications were dismissed on 03.04.2008. Hence, she has filed these appeals before this Court.

3. When the matters came up for hearing on 06.09.2019, there was no representation for the respondent, hence, this Court directed the petitioner's counsel to take substitute service through paper publication in any one of the Tamil local daily, intimating the respondent that the next date of hearing was on 20.09.2019. As per which, the paper publication has been effected on 11.09.2019 and affidavit of service has also been filed by the petitioner's counsel, but there is no representation for the respondent even today i.e. on 25.10.2019 when the matter came up for hearing.

4. However, on perusal of the records, it is seen that after the exparte order was passed on 13.09.2007 in O.S.No.2 of 2006, the petitioner herein had filed the setting aside application within a period of 4 days i.e. on 17.09.2007 in I.A.No.1414 of 2007, but the same has not been considered by the Family Court Judge at Puducherry while dismissing the application. Further, it is seen that the petitioner has not been given sufficient opportunity, to adduce evidence on her side. Hence, in view of the same, this Court is inclined to direct the Family Court Judge at Puducherry to take the I.A.No.1414 of 2007 on file and reconsider the matter a fresh after giving sufficient opportunity to the parties concerned.

5. Accordingly, the C.M.A.No.1585 of 2008 is disposed of and the Family Court Judge at Puducherry is directed to take the I.A.No.1414 of 2007 on file and reconsider the matter a fresh after giving sufficient opportunity to the parties concerned. As far as the C.M.A.1586 of 2008 is concerned, it is dismissed as the petitioner is now seeking a remedy only for entertaining the maintenance petition, and not pursuing the application filed for restoring the M.O.P.No.98 of 2006 which was filed by the respondent for dissolution of marriage. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Family Court, Puducherry.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.V.Raghavachari, Advocate Sr.89572

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and
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srg 03/02/2020