

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NO.2814 OF 2019

R.Augustian Isaac .. Appellant/Petitioner

vs.

J.Hemalatha .. Respondent/Respondent

Appeal filed under Section 19 (1) of the Family Courts Act, 1984 against the judgment and decree dated 04.12.2017 passed in D.O.P.No.564 of 2015 by the Additional Principal Judge, Additional Family Court, Coimbatore.

For Appellant : Mr.Jebadass Pandian
For Respondent : Mr.K.J.Saravanan

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is preferred by the appellant seeking to reverse the judgment and decree granted by the Additional Principal Family Court, Coimbatore.

2.Incidentally, the respondent and minor child have filed M.C.No.20 of 2014, in which an order has been passed directing the appellant to pay a sum of Rs.10,000/- and Rs.5,000/- respectively. Challenging the same, a Revision has been filed and the same was dismissed. Thus, the said order has become final. During the pendency of this appeal, the appellant was directed to pay a sum of Rs.2 lakhs which has not been complied with. It appears that the order passed in M.C.No.20 of 2014 has also not been complied with.

3.Learned counsel appearing for the appellant submitted that unfortunately the appellant could not appear for the completion of evidence. Similarly, he was not in a position to cross-examine the respondent. Therefore, the appellant will have to be given an opportunity to put forth his case and cross-

examine the respondent. Thus, the appeal will have to be allowed by setting aside the order dismissing D.O.P.No.566 of 2015 with direction to the Family Court to take up the said case and decide it on merit by considering it afresh.

4.Learned counsel appearing for the respondent submitted that the appellant consciously did not choose to complete his evidence and thereafter cross examine the respondent. The order passed against the appellant in M.C.No.20 of 2014 has become final. However, neither the said order has been complied with nor the interim order passed by this Court. Thus, the appeal will have to be dismissed.

5.The appellant has not adduced any convincing reason for remitting the matter for fresh consideration. It is not as if the appellant has been prevented from completing his evidence and thereafter cross-examining the respondent by a reasonable cause. As the appellant himself is the one who filed the petition for divorce, he ought to have pursued the matter diligently. The petition has been dismissed not by exparte but by a reasoned order. Accordingly, the appellant has been heard and thereafter order has been passed. The petition filed by the respondent seeking maintenance in M.C.No.20 of 2014 has also been ordered. The averments are common in both petitions and so also the stand taken by the parties, so also the finding given by the court. The appellant has not even chosen to comply with the interim order passed by this Court nor the order passed in M.C.No.20 of 2014, which has attained finality by dismissal of the revision by this Court.

6.In such view of the matter, this Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

mmi
To

The Additional Principal Judge,
Additional Family Court, Coimbatore.

+lcc to Mr.K.J.Saravanan, Advocate, S.R.No.106129

C.M.A.No.2814 of 2019

PM(CO)
CS/02/09/2020