

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2019

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.No.1816 of 2019
and
C.M.P.No.5957 of 2019

T.S.Nirmal Kumar ... Appellant/Respondent

vs.

K.K.Nithya ... Respondent/Petitioner

Appeal filed under Section 19 of the Family Courts Act, 1984 against the fair and decretal order dated 29.10.2018 passed in F.C.O.P.No.242 of 2015 on the file of the Family Court, Salem.

For Appellant : Mr.A.Nagarathinam
For Respondent : Mr.S.Kalyana Raman

JUDGMENT

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

Heard the learned counsel appearing for the parties.

2.This appeal is preferred by the appellant, aggrieved over the divorce granted in O.P.No.242 of 2015 in favour of the respondent/wife. The appellant, for the reasons known, has not appeared for number of hearings and accordingly, he was set exparte on 10.09.2018. Thereafter, the petition filed for divorce was taken up for final hearing and on the available materials, the aforesaid order granting divorce was passed on 29.10.2018. Thus, challenging the same, the present appeal has been filed.

3.Learned counsel appearing for the appellant would submit that the submission made by the appellant has not been taken note of by the Court below. He would further submit that the appellant was suffering from fever and peptic ulcer from 05.09.2018 onwards and there is no sufficient material available for granting divorce.

4.Mr.Kalyana Raman, learned counsel appearing for the respondent submits that it is not as if the appellant was absent from the date on which he was set exparte and thereafter when the divorce was granted by the Family Court, in fact, he was not appearing before the Court from the year 2017 onwards. Thus, no interference is required, especially, when the Family Court considered the materials available on record and satisfied itself that the grounds for divorce are available.

5.The appellant was not appearing before the Court from the year 2017 onwards. Accordingly, he was set exparte on 10.09.2018, after recording his earlier absence and his failure to cross-examine the respondent apart from examining himself and marking documents. Now, the appellant has filed certain documents to show that he was not able to appear before the Court below from the date on which he was set exparte. We are not inclined to accept the aforesaid documents for more than one reason. It is not as if the appellant was absent on the date on which he was set exparte and thereafter but he was not appearing before the Court from the year 2017 onwards. Even the said document is dated 08.11.2018. Though, it is submitted that he was suffering from illness, the document filed speaks about only fever and peptic ulcer. Even otherwise, the date mentioned therein does not indicate the period for which he was absent during the year 2017. There is nothing on record to disbelieve the statement recorded by the Court below that the appellant is not willing to cross-examine the respondent nor mark the documents. We may also note that the case is pending from the year 2015 onwards and the appellant was quite aware of the proceedings in which he participated by filing counter as early as 27.01.2016. Thus, we do not find any merit in the appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The Family Court,
Salem.

+1 CC to Mr.S.Kalyanaraman, advocate sr 22292.

+1 CC to Mr.A.Nagarathinam, Advocate sr 22339

C.M.A.No.1816 of 2019

SP(25/03/2019)