

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2019

CORAM:

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

C.M.A. No. 2093 of 2019

T.UMA MAGESHWARI ...Appellant/ Respondent

Vs.

K.THIAGARAJAN ... Respondent/ Petitioner

Prayer: Appeal filed under Section 19 of the Family Courts Act, 1984 against the order and decretal order in O.P. No. 4139 of 2017 on the file of the V Additional Family Court, Chennai, dated 26.12.2018.

For Appellant : Mr.V.Senthil Kumar
For Respondent : Mr.C.Jagadish

JUDGMENT
(Delivered by M.M.Sundresh, J.)

The appellant is the wife of the respondent. The respondent filed a petition for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 on the ground of cruelty. The appellant was set ex-parte on 21.06.2018 and thereafter filed an application to set aside the same. The said application was allowed on terms. As she did not comply with the terms, she was set ex-parte and decree of divorce was granted. Challenging the same, the present appeal has been filed.

2. Learned counsel appearing for the appellant submitted that non payment of costs was due to her inability. From the wedlock two children were born. The appellant is entitled to contest the matter on merits and an opportunity of hearing should be afforded to her. When the conditional order is expected to be complied with, the Court below ought not to have decreed it ex-parte. Therefore, the appeal will have to be allowed.

3. Learned counsel for the respondent submitted that

inasmuch as the conditional order was not complied with, the Family Court rightly granted the decree for divorce and, therefore, no interference is required.

4. What the appellant seeks is an opportunity to contest on merit. The status of the parties is not in dispute. It is not as if the ex-parte order was not set aside earlier. It is the case of the non-compliance of the conditional order passed.

5. Considering the above, we are inclined to give one more opportunity to the appellant to put forth her case to get an order on merit.

6. In such view of the matter, the order of the Court below is set aside and the matter stands remitted to the Court below.

The appeal stands allowed. We direct the Court below to dispose of O.P.No.4139 of 2017 within a period of four months from the date of receipt of a copy of the order. No costs. Consequently, connected C.M.P. No. 7846 of 2019 is closed.

ssm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer
V Additional Family Court,
Chennai.

+1cc to Mr.C.Jagadish, Advocate, SR.No.34379

+1cc to Mr.V.Senthil Kumar, Advocate, SR.No.33773

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Kak(16/07/2019)

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