

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NOS.3018 AND 3069 OF 2019

L.Arunkumar ...appellant in both appeals

Vs

B.S.Suganya ...Respondent in both appeals

PRAYER:

C.M.A.No.3018 of 2019 filed against the Judgment and Decree dated 15.06.2019 in I.A.No.1844 of 2017 in O.P.No.4387 of 2015 on the file of the Principal Family Court, Chennai.

C.M.A.No.3069 of 2019 filed against the Judgment and Decree dated 06.03.2019 in I.A.No.3451 of 2017 in O.P.No.4387 of 2015 on the file of the Principal Family Court, Chennai.

For appellant : Mr.R.Sreedhar

For respondent : Mr.S.Anil Sandeep

COMMON JUDGMENT

(made by K.K.SASIDHARAN, J.)

The matrimonial proceedings initiated by the appellant for a decree of divorce in O.P.No.4387 of 2015 was dismissed by the Principal Family Court, Chennai, solely on the ground that he failed to pay maintenance within the stipulated period and that there was no relief granted by the High Court in the appeal filed against the order fixing maintenance. The family Court thereafter, without discussing the merits of the matter, allowed the counter claim made by the wife in I.A.No.1844 of 2017 and granted a decree of divorce on the ground of cruelty and desertion, Without discussing the merits of the matter. In short, the decree of divorce was granted solely on the ground that the case of the appellant was struck off on account of his failure to pay maintenance and as such, there is no evidence to disbelieve the case pleaded by the respondent. The trial Court also granted a decree directing the appellant to pay permanent

alimony of Rs.1,80,00,000/-. The trial Court allowed the miscellaneous petition filed by the wife for interim maintenance and a direction was issued to the appellant to pay a sum of Rs.65,000/- towards maintenance. Feeling aggrieved, the appellant has come up with the appeal in C.M.A.Nos.3018 and 3069 of 2019.

2. We have heard the learned counsel for the appellant. We have also heard the learned counsel for the respondent.

3. The appellant filed original petition in O.P.No.4397 of 2015 before the Principal Family Court, Chennai, praying for a decree of dissolution of marriage which was solemnized on 2 February 2009. In the lawful wedlock, a female child was born to the parties. The appellant in the original petition contended that the respondent is having illicit relationship with one Ramesh, who is residing just opposite to her house at Chennai. The appellant has also produced material evidence to show that they have been staying in hotels at Chennai.

4. The respondent on receipt of notice in the matrimonial proceedings, filed a counter claim in I.A.No.1844 of 2017. The respondent prayed for a decree of divorce on the ground of cruelty and desertion.

5. Before the trial Court, the respondent filed interlocutory applications in I.A.No.1517 of 2017 and 3451 of 2017 for interim maintenance. The trial Court disposed of the interim applications by directing the appellant to pay maintenance. The Family Court directed the appellant to comply with the interim order. Though the appellant filed a civil miscellaneous appeal before the High Court, it was not taken on file. Since the appellant failed to comply with the conditional order relating to maintenance, the original petition for divorce was dismissed. The trial Court thereafter by the very same order, struck off the defence of the appellant in the counter claim.

6. The trial Court without discussing the merits of the matter, granted a decree of divorce in favour of the respondent only on the ground that there is no contra evidence available on records.

7. The appellant in his original petition alleged various acts constituting desertion, cruelty and adultery. It is true that he was obliged to comply with the order passed by the trial Court. The trial Court was also correct in its action in dismissing the original petition for divorce on the ground of non compliance of the conditional order relating to maintenance. However, the dismissal of the original petition for default

itself would not give a right to the respondent to obtain a decree of divorce. The trial Court should be convinced with the material evidence produced by the respondent to show that she is entitled to a decree of divorce on the ground of cruelty and desertion. The trial Court in the subject case has not made any such attempt. According to the trial Court, on account of the dismissal of the original petition for default, there is no contra evidence available to disprove the contention of the wife. Merely because the original petition was dismissed, it cannot be said that the respondent has proved her case.

8. We are not in a position to agree with the finding given by the learned trial Judge that on account of the dismissal of the original petition for default, the respondent is entitled to a decree of divorce. There cannot be a default decree of divorce in a matter of this nature. The order passed by the Family Court Judge is therefore liable to be set aside.

9. The respondent filed two miscellaneous applications before the trial Court for maintenance. The respondent filed the miscellaneous petition before the trial Court claiming a sum of Rs.40,000/- for her maintenance and another sum of Rs.30,000/- towards the maintenance of her daughter under Section 24 of the Hindu Marriage Act. The petitions were allowed by the trial Court in part. The appellant was directed to pay interim maintenance to the respondent at the rate of Rs.25,000/-. Similarly, he was directed to pay a sum of Rs.40,000/- towards maintenance of the minor child. The interim order was passed pending disposal of the original petition. The original petition itself was subsequently dismissed for default. The Family Court while granting a decree of divorce by allowing the counter claim, directed the appellant to pay permanent alimony quantified at Rs.1,80,00,000/-. We have already arrived at a finding that the trial Court was not correct in allowing the counter claim solely on the ground of dismissal of the original petition for default.

10. After hearing the learned counsel for the parties, we are of the view that the issue requires fresh consideration by the trial Court. We are informed that the appellant has already filed a petition to set aside the order in O.P.No.4387 of 2015 dismissing the original petition for default. In order to render complete justice, we restore the original petition in O.P.No.4387 of 2015 along with the counter claim filed by the respondent in I.A.No.1844 of 2017.

11. The appellant is directed to pay maintenance to the minor child at the rate of Rs.10,000/- p.m. till the disposal of the original petition in O.P.No.4387 of 2015. The appellant shall also bear the entire school expenses of the minor child

till the disposal of the matrimonial proceedings.

12. The parties are entitled to produce materials to substantiate their respective contentions before the trial Court. The Family Court shall take up both the original petition and the counter claim and dispose of the same on merits and as per law.

13. The Civil Miscellaneous Appeals are allowed, as indicated above. No costs.

Sd/-
Assistant Registrar(CS VIII)

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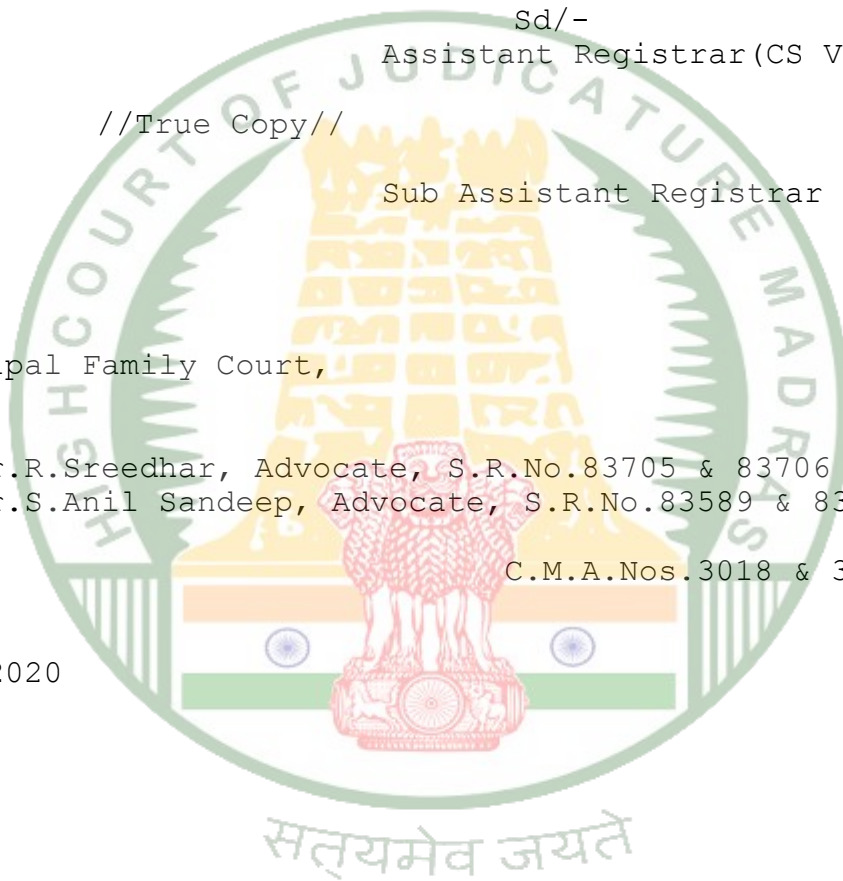
The Principal Family Court,
Chennai.

+2cc to Mr.R.Sreedhar, Advocate, S.R.No.83705 & 83706

+2cc to Mr.S.Anil Sandeep, Advocate, S.R.No.83589 & 83590

C.M.A.Nos.3018 & 3069 OF 2019

SPD(CO)
CS/22/01/2020



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