

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD)No.4670 of 2017

and

CMP.Nos.21810 of 2018 and 21991 of 2017

Jaisef Kevin

... Petitioner

-VS-

C.P.Abisha

... Respondent

Prayer: Petitions under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 23.11.2017 passed in I.A.No.1878 of 2017 in DOP:49 of 2018 pending on the file of the Hon'ble Principal District Court at Thoothukudi. (Prayer amended vide Court order dated 18.09.2018 made in CMP.No.16077 of 2018 in CRP.No.4670 of 2017 by (MSRJ))

For Petitioner : M/s. Paul and Paul

For Respondent : Mr. Jayaprakash

ORDER

The above Civil Revision Petition is filed challenging the non-speaking order passed by the learned V Additional Family Court, Chennai in setting aside the ex parte order passed in OP.No.425 of 2017. The brief facts that are necessary for disposing of the above

Civil Revision Petition are as follows:

The revision petitioner has filed an O.P. for the divorce before the Vth Additional Family Court, Chennai in O.P.No.425 of 2017 narrating the various instances of cruelty that he had undergone at the hands of the respondent and her family members. The respondent herein did not file the counter and she had also not appeared before Court on the date of hearing and accordingly an Ex parte decree of divorce was passed on 17.07.2017. In the affidavit filed in support of the Petition for setting aside the Ex parte decree, the respondent herein has stated as follows:

" I most respectfully state that I had received the Court notice but I could not come to this Hon'ble Court since I was suffering from viral fever in the month of May 2017. Moreover, I could not move anywhere and I had taken bed rest for the past 2 months. Hence I could not appear before this Hon'ble Court at first hearing on 18.05.2017. Due to my ill-health I have not come before this Hon'ble Court at the earliest point of time. Taking advantage of all these factors, the respondent had got an ex parte decree of divorce on 17.07.2017."

2. The said Application was contested by the revision petitioner by inter alia alleging that the entire averments contained in the affidavit are totally false, since on the very same day of hearing namely on 18.05.2017, the respondent was attending a wedding and the relevant photographs had been already filed along with the said

Petition. That apart, the revision petitioner has also submitted her facebook details which would show that she was quite active and was not that ill. In addition to that, the respondent had filed an application for transferring the proceedings pending on the file of the Vth Additional Family Court to the Court at Nagercoil and in the affidavit filed in support of the Transfer Petition, the respondent has stated as follows:

"I most respectfully state that the respondent was not a dutiful husband and having ill-treated me like anything got an ex-parte order by alleging wild and false allegations which is necessarily to be refuted. As I was admitted in the hospital for 2 months I did not have a chance to explain my state and show that the allegations raised by the respondent is completely false and his only intention was to throw me out of the matrimonial home."

3. Therefore, it is clear that on two different occasions, two different statements have been made by the respondent viz. In the affidavit she would state that she had taken bed rest and in the affidavit which she filed later, she would state that she was hospitalised for two months. Be that as it may, the learned Vth Additional Family Court Judge has not considered the counter of the respondent and there is no reference to the counter pleadings raised by the revision petitioner. The counter pleadings raised by the

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petitioner particularly the contention that the respondent has come to Court with the false affidavit.

4. Considering the above, this Court is inclined to remit I.A.No.1878 of 2017 in O.P.No.425 of 2017 which has now been transferred to the file of the District Court at Thoothukudi, which is being numbered as O.P.No.49 of 2018. The Principal District Judge shall allocate a number for I.A.No.1878 of 2017 and shall hold an enquiry in the said Interlocutory Application and pass a considered order after providing opportunity to both parties to let in evidence. The said exercise shall be completed within a period of two (2) months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.03.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mrn

To
1.The Principal District Court,
Thoothukudi.



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