

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(PD).No.175 of 2020
and
C.M.P.Nos.949 of 2020

Muthurajah Milana @ Gayathri ... Petitioner

Vs.

D. Rajkumar ... Respondent

PRAYER : Civil Revision Petition filed under article 227 of Constitution of India praying to set-aside the fair order and decreetal order dated 05.12.2019 made in I.A.No.1 of 2019 in H.M.O.P.No.1986 of 2017, thereby allow the present Civil Revision Petition.

For Petitioner

: Mr. R. Ramachandran

ORDER

The Civil Revision Petition has been filed against the order dismissing the petitioner's application filed under Order IX Rule 7 CPC to set aside the exparte order passed against the petitioner.

2. The petitioner is the wife. The respondent/husband filed a divorce petition in H.M.O.P.No.1986 of 2017 on the file of the III Additional Family Court, Chennai. Since the petitioner did not appear for hearing on 03.09.2019, she was set exparte and an exparte came to be passed on that date. Immediately, within the time, the petitioner has filed an application in I.A.No.1 of 2019 to set aside the exparte order and that the application came to be dismissed by the Family Court on 05.12.2019. Now, challenging the same, the present revision has been filed.

3. The learned counsel for the petitioner submits that the petitioner is residing at Germany and employed there. Hence, on the date posted for hearing, she was not able to come and

appear before the Court and thereafter, she filed the application in time to set aside the exparte order. But, without considering the same, the Family Court, dismissed the application.

4. Per contra, the learned counsel for the respondent submits that it is not the first time, the petitioner has been deliberately avoiding to appear before the Court. Earlier in the year 2018 itself, she was set exparte, thereafter, on the application filed by her, it was restored. Once again, now, she failed to appear before the Court and the reason stated by her for non-appearance is not a bonafide.

5. I have considered the submissions made on either side and perused the materials available on records carefully.

6. Considering the fact that the petitioner is the resident of Germany and also filed an application in time, in order to give an opportunity to her, the Court below ought to have allowed the application. However, the learned Judge dismissed the application on the ground that the matter is pending from the year 2017 and there is no progress in the proceedings.

7. Considering the above facts and circumstances and in the interest of justice and in order to given an opportunity to the petitioner, I am inclined to allow this revision.

8. Accordingly, the Civil Revision Petition is allowed and the H.M.O.P.No.1986 of 2017 is restored on file. No costs. Consequently, connected miscellaneous petition is closed.

9. Since the O.P. is pending from the year 2017, the III Additional Principal Judge, Family Court, Chennai, is directed to proceed with the trial and dispose the O.P., within a period of six (6) months from the date of receipt of a copy of this order. The petitioner is directed to co-operate with the trial.

23.01.2020

Index:Yes/No

Internet:Yes

Speaking/Non-speaking order
mrp

To

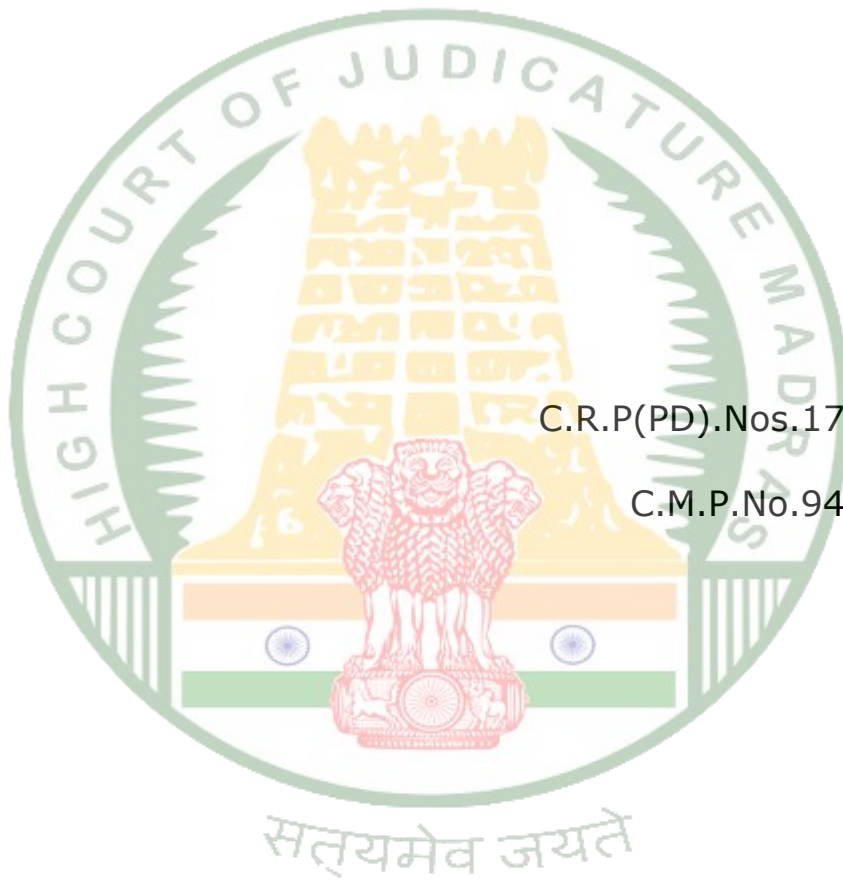
The III Additional Family Court,
Chennai.

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C.R.P(PD).Nos.175 of 2020

V.BHARATHIDASAN, J

mrp



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