

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 08.12.2020**

**CORAM:**

**THE HONOURABLE MR.JUSTICE V.SIVAGNANAM**

C.R.P.(P.D.No.2175 of 2019  
and C.M.P.No.14044 of 2019

M.Senthilkumar ...Petitioner

Vs

Uma Maheswari ...Respondent

**Prayer:** Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and decreetal order dated 07.05.2019 made in I.A.No.1 of 2019 in M.M.O.P.No.661 of 2018 on the file of the Principal Family Court, Coimbatore.

For Petitioner : Ms.R.Shase

For Respondent : M/s Karan and Uday

**ORDER**

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 07.05.2019 made in I.A.No.1 of 2019 in M.M.O.P.No.661 of 2018 on the file of the Principal Family Court, Coimbatore.

2.The H.M.O.P has been filed by the respondent herein to dissolve the marriage held between the petitioner and the respondent.

3.During the trial, the petitioner herein failed to appear before the trial Court for cross examination. Therefore, the petitioner was set as an ex-party in H.M.O.P.No.661 of 2018 by order dated 25.10.2018.

4.Aggrieved against the order of the learned trial Judge, the petitioner herein has preferred the application in I.A.No.1 of 2019 on the file of the Principal Family Court, Coimbatore.

5.After hearing both sides, the learned trial Judge allowed the application in I.A.No.1 of 2019 dated 11.04.2019 on the ground that the petitioner herein is entitled to get an order under Order 9 Rule 7 CPC, with cost of Rs.5,000/- payable to the respondent herein and further directed the petitioner to give an undertaking in the form of affidavit binding himself to give his fullest cooperation to dispose of the original petition in H.M.O.P.No.661 of 2018.

6.Against the order dated 11.04.2019 in I.A.No.1 of 2019, the petitioner is before this Court.

7.The learned counsel for the petitioner would submit that the petitioner was set as exparte on 25.10.2018, for non appearance before the trial Court. Therefore, the petitioner filed the application in I.A.No.1 of 2019 to set aside the exparte order. The trial Court after considering the affidavit of the petitioner allowed the petition and set aside the exparte order on payment of cost of Rs.5,000/- payable to the respondent on or before 25.04.2019 and also directed to file an affidavit binding himself to give his fullest cooperation to dispose of the original petition in H.M.O.P.No.661 of 2018. The petitioner has paid the cost to the respondent, but failed to file the affidavit as directed by the trial Court. Hence, the Court dismissed the petition filed by the petitioner to set aside the exparte order. The learned counsel for the petitioner further submitted that he may be permitted to contest the case, otherwise he will be seriously prejudiced and thus, pleaded to allow the Civil Revision Petition.

8.The learned counsel for the respondent supported the order of the trial Court.

9.Heard the learned counsel for the parties and perused the materials on record.

10. Petitioner and the respondent are husband and wife. Wife filed the petition in H.M.O.P.No.661 of 2018. The revision petitioner/husband was not appeared before the trial Court for cross examination. Therefore, due to his non appearance, he was set as an exparte by order dated 25.10.2018. Immediately, the petitioner filed the petition in I.A.No.1 of 2019 to set aside the exparte order, which was allowed with cost of Rs.5,000/- payable by the petitioner on or before 25.04.2019, along with a condition that the petitioner has to file an affidavit binding himself to give his fullest cooperation, to dispose of the original petition in H.M.O.P.No.661 of 2018, within three months. Even though the petitioner paid the cost to the wife, she also received the cost, but failed to file the affidavit. For that reason alone the petition in I.A.No.1 of 2019 was dismissed.

11. The order of the trial Court made in I.A.No.1 of 2019 dated 07.05.2019 is unjust, since the cost has been paid, for non filing of affidavit, the petitioner cannot be put out of the Court from contesting the case. Therefore, I am inclined to set aside the order of the trial Court and allow the Civil Revision Petition.

12. Accordingly, the Civil Revision Petition is allowed, order made in I.A.No.1 of 2019 in M.M.O.P.No.661 of 2018 dated 07.05.2019 is set aside, with a direction to the petitioner to file the affidavit binding himself to give his fullest cooperation, to dispose of the original petition in H.M.O.P.No.661 of 2018 within a period of two weeks from the date of receipt of a copy of this order. Further, the Principal Family Court, Coimbatore, is directed to complete the trial within a period of three months from the date of receipt of a copy of this order. Consequently connected miscellaneous petition is closed. No costs.

**08.12.2020**

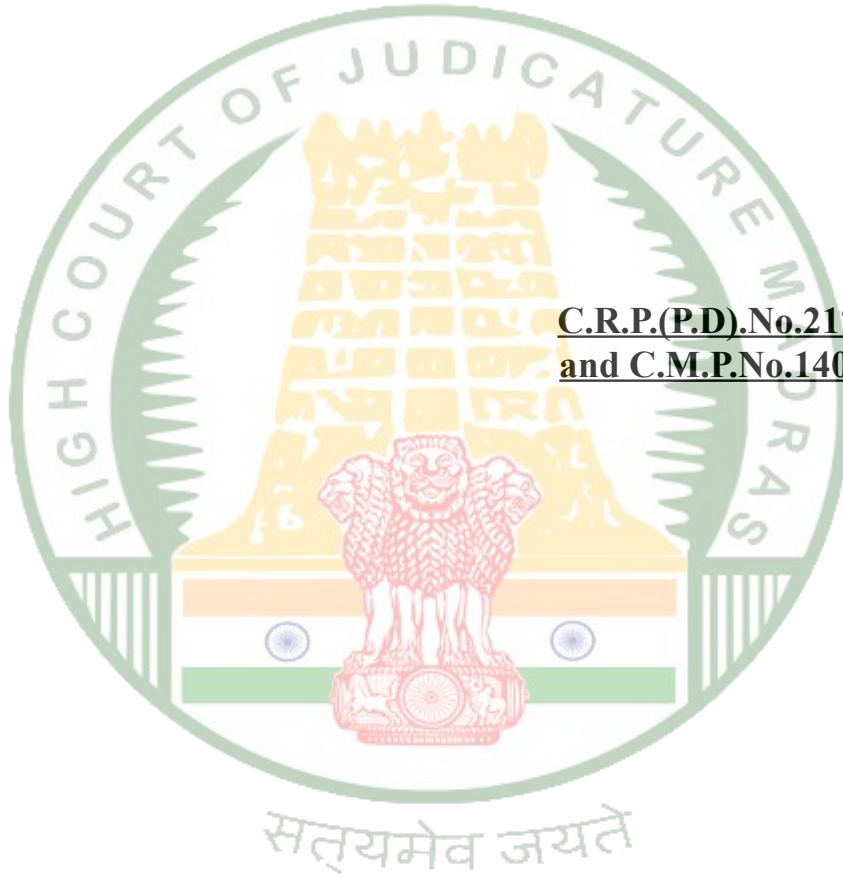
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To  
The Principal Family Court, Coimbatore,

C.R.P.(P.D).No.2175 of 2019

**V.SIVAGNANAM.J,**

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