

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 23.12.2020	Date of Pronouncing Judgment 17.02.2021
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.(P.D).No.471 of 2020

and

C.M.P.No.2559 of 2020

Susil Adam Seelan

.. Petitioner

Vs.

S. Jeyarani

.. Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order made in I.A.No.4 of 2019 in I.D.O.P.4484 of 2017 dated 10.01.2010 on the file of the V Additional Family Court, Chennai.

For Petitioner : Ms. Vasudha Thiagarajan

For Respondent : No Appearance

ORDER

The petitioner is the husband and the respondent is the wife. For the sake of convenience, parties are referred as stated above.

2. The husband has preferred this civil revision petition under Article 227 of Constitution of India to set aside the ex-parte order passed in I.A.No.4/2019.

3. The brief facts are as follows:

(i) The marriage between the petitioner/husband and respondent/wife was conducted on 10.09.1999 as per Christian rites. They have a major son. The wife filed O.P.No.4484 of 2017 for divorce on 12.12.2017. The husband filed the counter on 18.04.2018. The wife (PW.1) filed proof affidavit. For continuation of cross examination of P.W.1 was posted on 18.03.2019. Since the husband failed to cross examine P.W.1 further, this Court on 15.04.2019 passed a conditional order directing the husband to cross examine PW.1 further and hence he was set ex-parte. Then, he filed a

petition to set aside the ex-parte order. It was allowed since the wife said no objection. Further, on 13.06.2018, 21.06.2019, 24.06.2019, 18.07.2017, 26.08.2019 and 20.09.2019, the husband did not cross examine P.W.1 further. On that day an ex-parte order was passed since the husband did not appear before this Court and did not cross examine PW.1 further.

4. Hence, the husband has filed above I.A.No.4/2019 to set aside the ex-parte order, for the failure to cross examine the P.W.1 for more than twice. In the said application, the respondent filed a counter stating that during the pendency of the above, both the husband and wife jointly filed mutual consent petition in O.P.SR.No.3237/2019 on 24.06.2019 before the Principal Family Court, Chennai. As per the terms of the mutual consent petition, she has to settle all her properties worth crores of rupees, situated at Chetpet, Ashok Nagar and Arakkonam. Accordingly, she complied with the order. However, her husband refused to honour the mutual terms of agreement. After settlement of the properties, as per the terms of mutual agreement, the husband has turned around and now contesting the main O.P.

5. The learned Principal Judge, on consideration of the facts has held that despite several opportunities, the husband has not shown any interest in cross examination of P.W.1. Time and again for further cross examination, it has been adjourned from time to time. Accordingly, dismissed the petition and hence, the CRP.

6. Heard, Ms. Vasudha Thiagarajan, learned counsel for the petitioner.

7. In view of the submission made by the learned counsel for the petitioner, in spite of filing a memo about the pendency of the CRP, the trial Court has proceeded to pass an ex-pare decree. This Court has called for the lower Court records. However, the submission made on behalf of petitioner husband, appears to be false and erroneous. By an order dated 05.02.2020, the case has been decreed ex-parte. A perusal of the order also shows that based upon the oral and documentary evidence, after discussion, the trial Court has given a categorical finding that the ground of cruelty is

made out and accordingly passed an ex-parte decree. This Court expresses its displeasure on the wrong submission made on behalf of petitioner husband.

8. This CRP is in respect of order setting the petitioner ex-parte who is the respondent in the I.A., before the family Court, in the main petition. After perusing the docket sheet and the date of proceedings on several occasion, the petitioner-husband has not cross examined and conditional orders have been passed and thereafter, he was set ex-parte, at the first instance on 24.04.2019, application to set aside ex-parte in I.A.No.3/2019, was allowed. Again, the husband has cross examined the wife on various dates. Again he has not cross examined. Again on 15.10.2019, the trial Court has passed a conditional order. Again the petitioner did not appeared. Hence, once again the petitioner husband was set ex-parte and again the application in I.A.No.4/2029 was filed.

9. Taking into consideration, the previous conduct of the petitioner-husband, in getting along with the cross examination of P.W.1

and also in spite of the conditional order, he is dragging on the proceedings and he was set ex-parte twice and hence the trial Court has rightly held that the petitioner-husband is only interested in dragging on the proceedings and accordingly, rejected the I.A.No.4/2019 and said finding rendered by the trial Court on record does not suffer from any irregularity or illegality or warranting interference in this revisional jurisdiction.

10. Accordingly, the CRP is dismissed with cost of Rs.5,000/- to be payable by the petitioner / husband to the respondent / wife. Even before filing of the CRP, it appears that the I.D.O.P.No.4484/2017 is decreed ex-parte. It is open to the petitioner to file appropriate application for appropriate relief, if he chooses to do so. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

17.02.2021

Index : yes/no
Internet : yes/no
Speaking Order/Non-Speaking Order
AT

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To
The V Additional Family Court,
Chennai.



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C.R.P.(P.D).No.471 of 2020 and
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RMT.TEEKAA RAMAN.J,

AT



Pre-delivery Order in

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