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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.1274 of 2021
and C.M.P. No.6542 of 2021

Vengadesh ... Appellant/Respondent

vs

Subashini ... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 against the fair and decretal order dated 11.09.2020 made in H.M.O.P. No.150 of 2019 passed by the Family Court, Cuddalore.

For Appellant :Mr.P.Muthamizh Selvakumar

For Respondent :No appearance

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

This appeal has been directed against the impugned decree and judgment dated 11.09.2020 passed by the Family Court, Cuddalore in H.M.O.P. No.150 of 2019.

2.Learned counsel appearing for the appellant submitted that the marriage between the appellant and the respondent was performed on 12.12.2010 at Murugalaya Thirumana Mandapam at Koothapakkam, Cuddalore with the blessings of the elders, friends and relatives of both the families, as per Hindu rites and customs. In the year 2017, due to some matrimonial disputes between the appellant and the respondent, the respondent filed H.M.O.P. No.68 of 2017, which was re-numbered as H.M.O.P. No.150 of 2019, under Section 13(1)(i-a) of the Hindu Marriage Act seeking dissolution of marriage along with I.A. No.278 of 2020 seeking a direction to the appellant to pay permanent alimony of



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Rs.30,00,000/- to the respondent. Accepting the case of the respondent, the Family Court, Cuddalore, has granted the decree for divorce on 11.09.2020 and directed the appellant to pay a sum of Rs.10,00,000/- to the respondent towards permanent alimony. Disagreeing with the decree granted in favour of the respondent, the appellant has brought this appeal.

3.It is seen from records that though notice has been served on the respondent through e-mail, courier, whatsapp and speed post and her name has also been printed in the cause list, there is no representation on her behalf either through person or through counsel. Therefore, service on the respondent is completed.

4.As ordered by this Court on 10.11.2021, the learned counsel appearing for the appellant has filed additional affidavit and additional typed set of papers dated 17.11.2021 showing that the respondent got married one Mr.Arun on 25.01.2021 at Devanathasamy Temple, Thiruvanthipuram, Cuddalore District.

5.A perusal of the additional typed set of papers, containing copy of the marriage invitation, marriage photographs and marriage certificate of the respondent would show that she married one Mr.Arun on 25.01.2021; the said marriage was solemnised at Devenathasamy Temple, Thiruvanthipuram, Cuddalore District; the reception of the marriage was held at Vanniyar Marriage Hall, Thirupathiripuliyur, Cuddalore District; and the same was registered on 11.02.2021, vide Registration No.19112/25.01.2021, website: www.devanathaswamytemple.org, E.mail:devanathaswamy@gmail.com with official seal by the Executive Officer.

6.It could be further seen from records that the Family Court, Cuddalore, by judgment and decree dated 11.09.2020, on considering the entire oral and documentary evidence placed before it, allowing the H.M.O.P. No.150 of 2019 and I.A. No.278 of 2020, has granted divorce in favour of the respondent, dissolving the marriage held on 12.12.2010 between the appellant and the respondent and directed the appellant to pay a sum of Rs.10,00,000/- to the respondent towards permanent alimony.

7.It is also seen that this Court, on 07.04.2021, has granted an order of interim stay of permanent alimony to the tune of Rs.10,00,000/-. In this regard, it is relevant to refer to Section 25(3) of the Hindu Marriage Act, 1955 as under:

'If the Court is satisfied that the party in whose



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favour an order has been made under this Section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the Court may deem just.'

8.A perusal of the above provision clearly shows that the party, in whose favour an order has been made under this Section has re-married, the order granting permanent alimony can be modified or rescinded in such manner as the Court may deem fit.

9.In the present case, since the respondent has contracted her second marriage on 25.01.2021, which could be seen from the marriage invitation, photographs and marriage certificate of the respondent, we are of the view that the relief of permanent alimony cannot be granted in favour of the respondent. In view of the same, we are inclined to set aside the impugned order passed with regard to the permanent alimony and the same is set aside.

10.As the respondent had contracted her second marriage on 25.01.2021 even before the order of interim stay dated 07.04.2021 granted by this Court and after the decree and judgment dated 11.09.2020 passed by the Family Court, Cuddalore, we could presume that the second marriage contracted by her is a valid one and therefore, we are unable to set aside the grant of divorce granted by the Family Court, Cuddalore. Accordingly, this appeal stands disposed of. Consequently, C.M.P. No.6542 of 2021 is closed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

vga
To

The Judge,
The Family Court, Cuddalore.

+1cc to M/s.P.Muthamizhselvakumar, Advocate Sr.59298

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srg 16/03/2022