

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No.2679 of 2019
and
CMP.No.17646 of 2019

C.Janani

.. Petitioner

Versus

T.M.Venkateswaran

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order passed in I.A.No.278 of 2019 in I.A.No.401 of 2018 in O.P.No.2863 of 2016 dated 24.10.2018.

For Petitioner : M/s.K.Sumathi
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against order passed in I.A.No.278 of 2019 in I.A.No.401 of 2018 in O.P.No.2863 of 2016 dated 24.10.2018.

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2.The revision petitioner is the wife, who filed HMOP.No.2863 of 2016 against the respondent / husband for the relief of divorce under Section

13(1)(i-a) & 25 of the Hindu Marriage Act. The respondent / Husband also initially contested the case, but subsequently he remained ex-parte. Thereafter, the case was posted for ex-parte evidence. In the mean while, he filed an application to set aside ex-parte order under Order 9 Rule 7 of CPC., in I.A.No.401 of 2018. The said application was allowed on payment of cost of Rs.5,000/- to be paid on or before 09.07.2018. But, the respondent was not complied with the said order in time. Therefore, the order passed in I.A.No.401 of 2018 was dismissed on 09.07.2018. Thereafter, the case was adjourned for ex-parte evidence. In the mean while, again her husband / respondent filed a petition for extension of time to pay the cost. The said application was returned by the Court stating a reason that ' how it is maintainable' and the petition was returned on 01.10.2018 by the Court.

3. Thereafter, the petition was represented on 24.10.2018. The trial Judge without giving notice to this revision petitioner allowed the application by receiving a Demand Draft for Rs.5,000/-. The said order challenged by the revision petitioner herein. At the time of arguments, there is no representation on the side of the respondent.

4.The learned counsel for the petitioner / wife submit that when the petition was allowed on 24.10.2018, the original case was adjourned to 16.11.2018 and without giving any notice or knowledge to the petitioner the said application was allowed. So she prayed to set aside the order which is an erroneous one.

5.On a perusal of the records, it reveals that on 24.10.2018, when the application was represented by the husband, the learned Family Judge ought to have issued notice to the wife, but without following any such procedure, the said application was allowed accepting the Demand Draft for a sum of Rs.5,000/- enclosed by the petitioner.

6.In fact, in that application, he sought for extension of time to pay the costs, in which the wife has to be given notice, but the husband has not taken any steps to issue notice to the wife and without her knowledge, the said application was allowed. Further, as rightly pointed by the learned counsel for the petitioner that the petition filed to set aside set aside ex-parte order passed in I.A.No.401 of 2018 was already dismissed. Hence, without giving notice to the revision petitioner, the I.A.No.278 of 2019 was allowed by the learned

trial Judge is against the principals of natural justices. Therefore, the order passed by the learned trial Judge is unsustainable one.

7.Hence, the revision petition stands allowed and the order passed by the learned Additional Family Judge No.VI, in I.A.No.278 of 2019 in I.A.No.401 of 2018 in O.P.No.2863 of 2016 dated 24.10.2018 is set aside. At this juncture, this Court inclined to observe one aspect that the said petition was represented in the year 2018, but in the application was given number as I.A.No.278 of 2019, also another error committed by the trial Court. Therefore the way in which order passed by the trial Court is not satisfactory one.

8.Accordingly, the revision petition is allowed. Consequently, connected Miscellaneous petition is closed. No costs.

27.10.2021

Index : Yes / No
Speaking order: Yes/No
rri

To
1.The Additional Family Judge No.VI,
Chennai.

T.V.THAMILSELVI, J.

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