



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CMA. (MD) No.954 of 2021

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T.Marikkani ... Appellant /Petitioner/ Respondent

-vs-

M.Rajeswari ... Respondent/Respondent/ Petitioner

PRAYER : Civil Miscellaneous Appeal has been filed under Section 19 (i) of Family Court Act r/w. U/o 43 Rule 10 of C.P.C., against the fair and decretal order dated 23.08.2021 passed in I.A.No.1 of 2021 in O.P.No.72 of 2019, on the file of the Family Court, Srivilliputhur.

For Appellant : Mr.N.Rahamadullah

J U D G M E N T

(Judgment of the Court was delivered by **DR. G.JAYACHANDRAN, J.**)

The Civil Miscellaneous Appeal has been filed against the dismissal of I.A.No.1 of 2021 filed under Order 9 Rule 13 of C.P.C., before the Family Court, Srivilliputhur.

2. The subject matter of the Civil Miscellaneous Appeal is matrimonial dispute between the petitioner and the respondent. The respondent herein filed H.M.O.P.No.72 of 2019 before the Family Court, Srivilliputhur, seeking dissolution of marriage, on the ground of cruelty, whereas, the appellant herein filed H.M.O.P.No.8 of 2020, seeking restitution of conjugal rights. Though the appellant has pleaded that he is interested in resuming the matrimonial life by filing this petition, his conduct is something contrary to the petition. After fifteen adjournments, the trial



Court has called the appellant herein absent and set-exparte on 19.12.2020. The evidence was recorded and ex-parte decree was passed on 11.01.2021. Thereafter, the appellant herein has taken out an application to set aside the ex-parte decree. The trial Court, on perusing the petition and the records, has observed as follows:

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"On perusal of the divorce petition the respondent was directed to file his counter statement on 19.11.2019. The original petition was adjourned for 15 hearings so as to enable the petitioner to file his counter statement. The respondent was set exparte only on 19.12.2020. The Court has granted one year to the petitioner to file his counter statement. But the Court set the respondent exparte only on 19.12.2020. The petitioner was inactive for one year in filing a counter statement in the original petition for the relief of divorce. The respondent has examined her as P.W.1 through the proof affidavit only on 08.01.2021 after 19 days. It is seen from the record that the exparte decree was passed on 11.01.2021.

The petitioner has not filed any document that he had suffered with illness when the case was called on for hearing. The petitioner has filed the petition to set aside exparte order only on 08.02.2021. It is seen for the record that the respondent remained inactive and negligent in filing court his counter statement. In the light of the order of the Hon'ble Supreme Court his Court decides that the respondent does not have sufficient cause to set aside exparte order. So for the considered reason this court not finds any merit in the petition filed by the petitioner to set aside the exparte order and the Issue No.1 is answered accordingly.

In result, the petition filed by the petitioner is dismissed. No costs. No other relief."

3. When this Court posed a question as to whether the appellant, husband is willing to pay maintenance to the wife and child, there is no response, which makes it very clear that he is interested only in litigating and not giving quiet to the issue.

4. This Court, after considering the submissions made by the learned counsel appearing for the appellant and the records, finds that the reasons stated for not participating in the proceedings and for not filing the counter in spite of fifteen adjournments, coupled with the fact that the appellant herein has not even care to maintain the respondent and his daughter, who is studying in the High School, clearly indicate that the appellant herein is only



interested in protracting the proceedings, but not any interest in retaining or resuming or saving a matrimonial relationship with the respondent. Hence, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Family Court,
Srivilliputhur.

C.M.A. (MD) .No.954 of 2021

08.11.2021

RD/NS (23.11.2021) 3P 2C