



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.1841 of 2021

and

C.M.P. (MD) No.9877 of 2021

Vimalan .. Petitioner/Petitioner
Respondent/Petitioner

-vs-

R.J.Amutha .. Respondent/Respondent/
Petitioner/Respondent

Prayer :- Petition filed under Section 115 of Civil Procedure Code to call for the records relating to the order and decretal order dated 27.09.2021 passed in I.A.No.21 of 2021 in I.A.No.130 of 2016 in H.M.O.P.No.35 of 2021 by the Sub Judge, Usilampatti.

For Petitioner : Mr.D.Malaichamy

ORDER

This revision has been filed by the petitioner/husband challenging the order dated 27.09.2021 in I.A.No.21 of 2021 in and by which, the learned Sub Judge, Usilampatti has dismissed the petitioner's application to re-call the order dated 11.11.2016 passed in I.A.No.130 of 2016 in H.M.O.P.No.35 of 2021, which was allowed setting aside the ex-parte decree, dated 22.10.2016 passed against the respondent/wife.

2.The facts in brief are as follows:-

2.1.The petitioner herein had filed a petition for divorce against the respondent. The respondent had appeared in the above matter pursuant to the summons issued to her through counsel. However, since she had not filed her counter, she was set ex-parte and an ex-parte decree came to be passed on 22.10.2016. The



respondent, thereafter, filed an application for setting aside the ex-parte decree on the very next day, i.e., on 23.10.2016 along with a counter. The petitioner herein had not filed his counter to the above application and therefore, I.A.No.130 of 2016 was allowed on 11.11.2016. The petitioner had, thereafter, come forward with the impugned application viz., I.A.No.21 of 2021 to re-call the order dated 11.11.2016.

2.2.The basis on which the application to re-call the order was filed was on account of the fact that on the date when the respondent is said to have sworn to the affidavit filed in support of I.A.No.130 of 2016, the respondent was not in the country and was away at America. This detail came to the petitioner's knowledge by way of the proceedings in C.C.No.119 of 2014. Therefore, he sought to have the order setting aside the ex-parte decree re-called.

2.3.The respondent, in her counter, has categorically admitted her signing the affidavit filed in support of I.A.No.130 of 2016, and had admitted the contents of the said affidavit. She had also admitted that she had gone to America for her professional requirement.

2.4.The learned Sub Judge, Usilampatti, on perusing the records, had proceeded to dismiss I.A.No.21 of 2021. The learned Judge took note of the fact that after the order setting aside the ex-parte decree was granted, the petitioner had participated in the enquiry and had been examined as P.W.1 on 24.01.2020 and when the matter was posted for cross examination, only thereafter on 28.09.2020, the impugned application came to be filed. The learned Judge took the view that the petitioner was trying to some how get the ex-parte decree for divorce confirmed. Challenging the above, the petitioner/husband is before this Court.

3.Learned counsel for the petitioner would submit that a fraud has been played on the Court, since the respondent herein was not in the country on the date on which she is said to have executed the affidavit. He would, therefore, state that the respondent has to be prosecuted.

4.Heard the learned counsel for the petitioner and perused the records.

5.The case before this Court concerns a family issue viz., a petition filed by the husband to divorce his wife, the respondent herein. The only ground on which the petitioner seeks to re-call the order dated 11.11.2016 is that, on the date, on which the respondent is said to have signed the affidavit, she was out of the country. The respondent has clearly and categorically admitted her signature in the affidavit as also the contents therein. This



application to set aside the *ex-parte* decree has been passed as early as on 11.11.2016 and much water has flown under bridge thereafter and the trial has already commenced in the instant case. The petitioner herein has been examined in chief and the matter is posted for his cross examination. Without proceeding with the petition for divorce, the petitioner is trying to get an uncontested decree for divorce. It is not the case of the respondent that the signature in the affidavit is not that of the petitioner or that somebody else has forged her signature. On the contrary, the respondent admits that the signature in the affidavit is that of the respondent, but the only case is that she was not present in India on 23.10.2016, which is the date shown in the affidavit. This is nothing but a vexatious litigation and the same has been rightly rejected by the learned Sub Judge, Usilampatti.

6.In the result, I do not find any grounds to interfere with the order dated 27.09.2021 passed in I.A.No.21 of 2021 in I.A.No.130 of 2016 in H.M.O.P.No.35 of 2021.

7.Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

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 Sub Judge, Usilampatti.

+1 CC to M/s.D. MALAICHAMY, Advocate (SR-36092[F] dated 26/11/2021)

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RD(15.12.2021) 3P 3C