



CrI.O.P No.27533 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.12.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.O.P No.27533 of 2022
and CrI.M.P. No.16927 of 2022

Sriram

... Petitioner

Vs.

1.Anurada

2.Adith

Rep. by their mother

3.Manoj,

Rep. by their mother

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the returned Docket Order passed in Unnumbered MP in M.C. No.545 of 2019 dated 22.09.2022 pending on the file of learned V Additional Family Court, Chennai.

For Petitioner : Mr. S.Karthikeyan
for Mr.Ali Hassan Khan

ORDER

This Criminal Original Petition has been filed to set aside the returned Docket Order passed in Unnumbered MP in M.C. No.545 of 2019 dated 22.09.2022 pending on the file of learned V Additional Family Court, Chennai.



2. The petitioner is the husband and the respondents are his wife and two children. The respondent / wife filed a petition for maintenance in M.C. No.545 of 2019 before the V Additional Family Court, Chennai, against the petitioner / husband. The learned counsel for the petitioner submitted that the impugned petition has been filed for seeking permission of the Court to allow his mother to act as his power agent and make appearance on his behalf and represent his proceeding in M.C. No.545 of 2019; the petitioner had also filed a petition for dissolution of marriage in H.M.O.P. No.2519/2019 before the V Additional Family Court, Chennai; thereafter the petitioner had filed I.A. No.2 of 2021 seeking permission of the Court to allow him to represent through his mother in both the proceedings as his power agent; the said petition was allowed as early as on 07.02.2022; in pursuant to that the mother of the petitioner has been making her appearance without fail on all hearing in both the cases; having granted permission, on 22.09.2022, the learned V Judge, Family Court, Chennai had set the petitioner *ex parte* in the proceedings in M.C. No.545 of 2019 by passing the following order:

“Counter on before 1/9/22 power petition in IA 2/21 is allowed



on 7/2/22.

WEB COPY

Petitioner present respondent absent counter of respondent not filed. Passover call by 2.30 respondent called absent no representation through sufficient opportunity given respondent not filed counter and called absent, set ex parte enquiry 18/10/11.”

3. It is to be noted that on the docket of the maintenance case, a note has been made that I.A. No.2 of 2021 has already been allowed on 07.02.2022. Despite the same, the learned Judge had opted to set the petitioner as *ex parte*. When remarks were called from the learned Judge of the Family Court, he had stated that I.A. No.2 of 2021 has been filed by quoting a wrong provision and it was allowed on 07.02.2022, however, the said fact was brought to the knowledge of the learned Judge of the Family Court only on 30.07.2022. It is further stated by the learned Judge of the Family Court that the Court has ordered for the appearance of the petitioner since the petitioner did not file a fresh petition for permitting the power agent to appear on his behalf. Since the petitioner had omitted to appear before the Court in person and his mother was present, the petitioner was set *ex parte*.

4. For the sake of clarity, it is clarified that the respondent in the



WEB COPY

maintenance petition is the petitioner herein and the petitioner in the maintenance petition is the respondent herein. It is seen that the petitioner/respondent/husband was allowed to make his appearance through his mother on 13.07.2022. But even in the order dated 13.07.2022, the learned Judge had not considered the presence of the power agent of the petitioner and recorded that 'respondent absent'. Thereafter, the case was adjourned to 02.08.2022. On 02.08.2022 also, the appearance of the mother of the petitioner as his power agent was not taken into consideration but it was recorded as 'respondent absent'. On 02.08.2022, the following order has been passed :

" Petitioner present respondent absent counter of respondent not filed. Hence respondent is directed to file counter on or before 1/9/22 failing which further orders will be passed. Call on 1/9/22."

Thereafter the matter stood adjourned to 22.09.2022 and on the said date, the petitioner/respondent/husband was set exparte.

5. Though in the remarks of the learned Judge, V Additional Family Court, Chennai, it is stated that he had insisted the appearance of the petitioner, the orders of the learned Judge does not reflect the same. Had it been the order of the Court for any specific reason that the petitioner should



make his personal appearance and if the petitioner had failed to do so, then notice should be given to the petitioner as to why the permission granted to him to appear through the power agent could not be revoked. Having allowed the mother of the petitioner to make appearance on behalf of the petitioner, the Court ought not to have set the petitioner *ex parte*. Even for the reason for non-filing of counter, it can only be recorded as 'counter not filed'. If the petitioner had not chosen to file counter despite making appearance through his power agent, the Court is at liberty to pass orders in the main case itself.

6. Since the petitioner has been set *ex parte* even though the order granted in his favour for making his appearance through his power agent is in force, the petitioner should not have been compelled to file another application seeking permission to appear through the same power agent once again. That second petition was returned to be represented along with the petitioner. If the petitioner / respondent / husband is able to make his appearance at the time when the impugned petition is present, there is no necessity for him to seek permission of the Court to appear through power agent. Such an order passed by the learned Judge of the Family Court is impractical and illogical. Hence I feel that the written endorsement made by



the learned Judge, V Additional Family Court, Chennai, dated 22.09.2022 in unnumbered M.P. of 2022 in M.C.No.545 of 2019 is liable to be set aside.

7. It is made clear that the petitioner has no obligation to file another petition, when the permission granted to him vide order passed in I.A. No.2 of 2021 is not set aside by any higher forum. Since the learned Judge has set the petitioner *ex parte*, without taking into consideration of the earlier permission, the *ex parte* order passed against the petitioner is also liable to be set aside and the matter should be resumed to the stage of filing 'counter'. In the event of the petitioner/ respondent/husband files his counter through his mother who is the power agent, by properly affixing the signature of the petitioner / respondent / husband, the learned Judge, V Additional Family Court, Chennai shall accept the same.

8. These are the extraneous and exceptional circumstances where the Judges of the Family Court can exercise their discretion to grant permission to the parties to appear through their counsel. In the impugned maintenance case, it is also possible for the Court to examine the respondent / petitioner / wife and allow the counsel for the petitioner / respondent/ husband to cross-



WEB COPY

examine. However, the mother of the respondent cannot be allowed to be examined as a witness on the side of the petitioner / respondent / husband in the main case and speak about things which are in the personal knowledge of the petitioner. In that case, it is up to the petitioner / respondent / husband to make his personal appearance if at all he wants to be examined himself as a witness in the main proceedings. If the petitioner does not opt to examine himself as a witness on his side, there is no necessity for the Court to enforce his presence.

9. In view of the above stated reasons, this Criminal Original Petition is disposed and the Docket order made in Unnumbered M.P. in M.C. No.545 of 2019 dated 22.09.2022, on the file of the learned Judge, V Additional Family Court, Chennai is hereby set aside. Registry is directed to return the original Power of Attorney deed to the petitioner on producing a copy of the same and which shall be retained in the file. Connected miscellaneous petition is closed.

01.12.2022

Index : Yes/No
Speaking Order : Yes / No
bkn



WEB COPY



Crl.O.P No.27533 of 2022

R.N.MANJULA, J.,

bkn

To:

1. The Judge, V Additional Family Court, Chennai.

2. The Public Prosecutor,
High Court, Madras.

Crl.O.P No.27533 of 2022

01.12.2022