



CRP(PD)(MD)No.1893 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1893 of 2022 and
CMP(MD) No.8508 of 2022

Dandapani

... Petitioner

Vs

P.Sivabarathi

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned docket order dated 27.06.2022 and 21.07.2022 to number the unnumbered I.A.No. Of 2022 in HMOP No.182 of 2021, on the file of the learned Principal Sub Judge, Dindigul and set aside the same and allow this Civil Revision Petition.

For Petitioner : Mr.S.Ramakrishnan

ORDER

This Civil Revision Petition is filed as against the order passed in unnumbered I.A.No. of 2022, in HMOP No.182 of 2021, by the learned Principal Sub Judge, Dindigul.



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2.The respondent herein has filed the above HMOP No.182 of 2021 before the learned Principal Subordinate Court, Dindigul for the relief of dissolution of marriage. In the said application, notice was ordered. Though the petitioner received the notice, he failed to appear before the Court on 28.03.2022, on which the date, the case stands posted and hence an exparte order was passed on 28.03.2022. Thereafter, the case was posted for exparte evidence on 27.06.2022. To set aside the exparte order, the petitioner has filed an Interlocutory Application, under Order 9 Rule 7 of Civil Procedure Code, and the same was returned by the trial Court on the ground that the respondent did not receive the Court notice. According to the learned counsel for the petitioner, when the petitioner attempted to serve notice in the above application on 26.06.2022, the respondent refused to receive the Court notice. Thereafter, an attempt was made by the petitioner to serve notice on the respondent, her father refused to receive the same. Subsequently, notice sent through post was received by the respondent and also acknowledged by her. Along with the acknowledgment, the petitioner



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once again re-presented the petition. Even then, the application was returned. He further submits that the case is posted for exparte evidence on 10.10.2022. Hence, the learned counsel prays this Court a direction may be issued to the trial Court to number the unnumbered I.A.No. of 2022 in HMOP No.182 of 2021 filed by the petitioner.

3.This Court considered the submissions made by the learned counsel for the petitioner and also perused the materials placed before this Court.

4.The respondent wife filed HMOP No.182 of 2021 before the learned Principal subordinate Court, Dindigul, as against the petitioner/husband, for the relief of dissolution of marriage. Since the petitioner was absent on 28.03.2022, an exparte order was passed by the trial Court and the case was posted for exparte evidence on 27.06.2022. To set aside the exparte order, the petitioner filed an application, wherein, notice was not served upon the respondent, as such,



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it was returned. Even after the petitioner made efforts to serve notice on the respondent, it was refused to receive by her. Hence, the petitioner sent notice through post, which was acknowledged by the respondent. Along with the acknowledgment, when the petitioner re-presented the application, it was once again returned. This Court is of the view that the trial Court ought not to have returned the application even after acknowledgment for proof of service was produced by the petitioner. In order to give an opportunity to the petitioner to defend his case and to meet the ends of justice, the application filed by him has to be numbered.

5. In view of the above, there shall be a direction to the trial Court to take the application filed by the petitioner in HMOP No.182 of 2021, to file along with the available acknowledgment copy and the notice sent by postal and proceed with the trial in accordance with law. The petitioner is also directed to serve notice on the respondent counsel, who has appeared before the trial Court.



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6. With the above directions, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.09.2022

Index : Yes / No.
Internet : Yes / No.
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To

The Principal Sub Judge, Dindigul



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B.PUGALENDHI, J.

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CRP(PD)(MD)No.1893 of 2022 and
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21.09.2022