



C.M.A.No.2043 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY**

**C.M.A.No.2043 of 2015
and
M.P.No.1 of 2015**

N.Balaji

... Appellant

Vs.

Poornima

..Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 against the fair and decreetal order made in I.A.No.434 of 2013 in O.P.No.959 of 2003 dated 24.01.2015 on the file of III Additional Family Court, Chennai.

For Appellant : Mr.Krishna Ravindran

For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the fair and decreetal order in I.A.No.434 of 2013 in O.P.No.959 of 2003 dated



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24.01.2015, in and by which, the petition to set aside the order passed in the original petition filed by the husband for divorce which was dismissed for default, was dismissed.

2. The original petition was filed in the year 2003. When the matter was posted for cross examination, the petitioner was continuously absent from 25.01.2012 to 23.01.2013 and therefore, the original petition was dismissed for default. The restoration petition was filed stating that his father slipped and fell in the bathroom and became unconscious and therefore, the petitioner was taking care of him and thus, he was unable to attend the court. The trial court found that the petitioner has not proved the same either orally or by producing documentary evidence.

3. In that view of the matter, when the petition for divorce was filed as early as in the year 2003 and the matter was ripe for trial and the petitioner did not appear before the Court from 25.01.2012 to 23.01.2013 continuously, the petition was dismissed for default. Now, it is seen that we are in the year 2023 and even now, the respondent is not served.

3. Be that as it may, on the perusal of the order impugned in this appeal and the reasons mentioned in the affidavit, we are of the view that



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when such an old petition is sought to be restored, the petitioner ought to have let in evidence and proved the reasons mentioned in the restoration application. Therefore, we find no merits whatsoever to interfere with the order of the trial Court. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B,J.) (D.B.C, J.)
20.06.2023

Index : Yes / No
Internet : Yes
vsi

To
The III Additional Family Court,
Chennai



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J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY,J.

vsi

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