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C.R.PD.No.592 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.592 of 2023

a n d

C.M.P.No.4733 of 2023

Satish Kumar Banukumar ... Petitioner

Vs

Swarnarekha Gnanasivam ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the V Additional Principal Family Court, Chennai, made in I.A.No.3 of 2022 in O.P.No.2168 of 2021 dated 9/2/2023.

For Petitioner ... Mr.V.P.Raman

For respondent ... Mr.Arul Mozhi

ORDER

This Civil Revision Petition is filed by the petitioner/husband against whom, the respondent/wife has filed O.P.No.2168 of 2021, on the file of the learned V Additional Principal Family Court, Chennai, seeking divorce.



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2. The petitioner/husband has filed an application, in I.A.No.3 of 2022, seeking to set aside the ex parte order, passed against him, on 23/11/2021, in O.P.No.2168 of 2021 filed by his wife. After full fledged enquiry, the said petition was dismissed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. Heard Mr.V.P.Raman, learned counsel for the petitioner and Mr.Arul Mozhi, learned counsel for the respondent.

4. Perused the materials available on record.

5. Learned counsel appearing for the petitioner/husband submitted that the trial Court has failed to consider that the petitioner/husband is residing in USA and that notice in O.P.No.2168 of 2021 has not been served on him. It is also submitted that proof of delivery of notice, dated 6/10/2021 filed by the respondent/wife, which was obtained from USA postal service, did not have the signature of the petitioner/husband to show that he has received the notice.



7. It is further submitted that letter issued by the Irvine Company Apartment Communities, would go to show that the respondent/wife has filed a false affidavit, basing on which, the petitioner/husband was set ex parte, on 23/11/2021. It is also submitted in the grounds of appeal that the respondent has played fraud on the Court by filing a fabricated document, misleading the Court in respect of service of notice to the petitioner/husband.

8. On the other hand, the learned counsel appearing for the respondent vehemently submitted that notice to the petitioner was sent to the Chennai address which was declined by the father of the petitioner, thereby, the notice is deemed to have been served on account of declining by the father. In respect of service of the notice to the US address, it is submitted that the petitioner/respondent has filed a letter addressed by the US postal service to the effect that notice was served at the front desk of the Apartment, at 12.49 p.m., on 2nd September 2021, where the petitioner admittedly lives in one of the Apartment and that the person at the front desk has also signed after receiving of the summons cover containing the notice and the signature of the recipient also reflected in the letter given to the petitioner. The tracking details also confirm that



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the cover containing the notice was delivered in the address of the petitioner. Basing on the said information furnished by the US postal service and tracking information of service of notice, the petitioner was set ex parte.

9. The documents filed by the respondent before the Court in O.P.No.2168 of 2021 are tracking record in respect of the delivery of summons and also the letter given by US Postal service. The respondent has informed the Court basing on these two documents. These notices were delivered on the respondent. The petitioner, however, has filed an affidavit stating that the respondent has played fraud and filed false affidavit of service filed before the Court.

10. During the course of submissions, when the learned counsel for the respondent has taken serious objection in respect of comments made by the petitioner that the respondent has played fraud on the Court. This Court is also of the opinion that the petitioner should not have made the comments that the respondent has played fraud. The respondent has relied upon a letter issued by US postal service and also track record. These documents would go to show that notices were delivered on the



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front desk where the petitioner is residing. In every Apartment, a person at the front desk would normally receive all the correspondence in respect of inmates of all the flats and sends the communication to all inmates to collect the packets, letters, etc.

11. The petitioner has got every right to submit that though notices stated to have been delivered on the front desk of the Apartment, were not delivered to him. He can also seek for setting aside the ex parte order, on the ground that he has not received the cover. However, in order to set aside the ex parte decree, the petitioner is not expected to make any sort of allegations against the respondent that she has played fraud, created documents and obtained ex parte order by misleading the Court, etc.

12. Since the petitioner stated to have come down to India to contest the case, the petition for setting aside the ex parte order, should have been normally allowed. However, the learned trial Judge has clearly elaborated the reasons for his dismissal. The petitioner has filed additional affidavit on the advise of his counsel withdrawing the allegations levelled against the respondent. Considering the submissions, this Court is of the opinion that petition filed by the petitioner for setting



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aside the ex parte order can certainly be considered, so that both parties can contest their case by projecting their respective submissions.

13. In the result, this Civil Revision Petition is allowed and the ex parte order passed, on 23/11/2021, in O.P.No.2168 of 2021 is set aside, however, on cost of Rs.5,000/- (Rupees Five thousand only) to be paid to the Tamil Nadu State Legal Services Authority, Chennai. Consequently, the connected Miscellaneous Petition is closed.

20/6/2023

Index :yes/no
Neutral Citation: Yes/No
mvs.

To

1. V Additional Principal Family Court, Chennai.
2. The Member Secretary, Tamil Nadu State Legal Services Authority
Chennai

Dr.D.NAGARJUN,J

mvs.



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