



CRP (PD) No.2033 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.06.2023
Pronounced on	28.07.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (PD) No.2033 of 2023

M.Santhosh

... Petitioner/Respondent/
Petitioner

Vs.

K.G.Swetha

... Respondent/Petitioner/
Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order in I.A.No.2 of 2022 in HMOP No.3797 of 2018, dated 01.04.2023, on the file of V Additional Principal Family Court, Chennai.

For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Ms.V.Srimathi

For Respondent : Mr.G.Murugendran



CRP (PD) No.2033 of 2023

WEB COPY

hospitalization of her child, she could not appear before the Court. The petitioner/husband objected the said petition by stating that the intention of the respondent/wife is only to drag on the proceedings and no good and sufficient cause was shown by respondent/wife for her non-appearance. Though the Court below did not accept the case made by the respondent/wife, however, allowed the said application in the interest of justice and set aside the ex parte decree of divorce by order dated 01.04.2023, impugned in this revision.

3. In the present revision by the husband, the learned counsel for the applicant submitted that the Court below erred in allowing the application, though the respondent/wife failed the litmus test enshrined under Order 9 Rule 7 CPC. That the ground-norm of order 9 Rule 7 CPC is “good and sufficient cause”, which the respondent herein was unable to establish either through pleadings or evidence. The respondent failed to appear before the family Court for more than 20 occasions without any valid reasons. The intention of the respondent was only to drag on the proceedings for monetary benefits. In fact, this Court in CMA No.3220 of 2019 directed the Family Court within a period of six months which



CRP (PD) No.2033 of 2023

WEB COPY

was not done due to the *mala fide* attitude of the respondent/wife. The trial Court failed to take note of the above facts erroneously allowed the application on flimsy grounds raised by the respondent/wife. He would further submit that, the petitioner cannot be made to suffer the agony of prolonged litigation on account of negligence on the part of the respondent. Hence, it is a fit case for invoking the jurisdiction of this Court to set aside the order passed by the Court below in I.A.No.2 of 2023 by allowing this revision petition. To support his contention, he has relied upon the decision reported in **(1992) 2 RLR 619**.

4. On the other hand, the learned counsel for the respondent/wife would submit that once the trial court has exercised its discretion of allowing the application for setting aside the *ex parte* proceedings, this Court must not interfere in the exercise of its jurisdiction.

5. Heard both sides and records perused.

6. Order-9 Rule 7 provides that, where the Court has adjourned the hearing



CRP (PD) No.2033 of 2023

of the suit ex-parte, and the defendant, at or before such hearing, appears and assigns good cause for his/her previous non-appearance, he/she may, upon such terms as Court directs as to costs or otherwise, be heard in answer to the suit as if he/she had appeared on the day fixed for his/her appearance. It is, thus, clear that the Court can exercise the jurisdiction of permitting the defendant to be heard in answer to the suit only if good cause is assigned by the defendant for his previous non-appearance. Existence of good cause is thus, a condition precedent for the exercise of jurisdiction by a Court under Order 9 Rule 7 CPC. The term 'good cause' has been interpreted to be synonymous with 'sufficient cause'. In **Arnjun Singh V Mahendra Kumar**, the Supreme Court considered the scope of Order 9 Rule 7 CPC and observed;

" There is no material difference between the facts to be established for satisfying the two tests of 'good cause' and "sufficient cause". There cannot be a " good cause" which is not "sufficient" as affording an explanation for non-appearance, nor conversely a "Sufficient Cause" which is not a good one and further either of these is not different from "good and sufficient cause", which is used in this context in other to the decision in the two proceedings, if the Court finds in the proceeding under



CRP (PD) No.2033 of 2023

WEB COPY

Order 9 Rule 7 the lighter burden not discharged, it must a fortiori bar the consideration of the same matter in the later proceeding under Order 9 Rule 13 where the standard of proof of that matter is, if anything higher."

7. A perusal of the order under revision itself shows that the learned Family Court Judge has recorded the findings that the respondent/wife, petitioner in the above application has not submitted any supporting material for her absence. Only in the interest of justice the petition was allowed. This finding of the learned Family Court Judge is not fully justified. However, in my opinion, the lawful remedy available to a wife to contest the case on merits cannot be curtailed. In matrimonial cases, some liberal approach must be taken. Apart from that the Family Court, according to the learned counsel for the respondent/wife, proceeded to record evidence and therefore, at this stage it would be improper to reverse the order passed by the Court below. However, taking into consideration the attitude of the respondent/wife in prolonging the matter, imposing cost on the respondent would be appropriate for the mental agony suffered by the petitioner/husband due to the long pendency of the proceedings. Accordingly, a



CRP (PD) No.2033 of 2023

WEB COPY

sum of Rs.5,000/- is ordered to be paid by the respondent/wife to the petitioner directly within a period of two weeks on receipt of a copy of this order. Since the petition for divorce was filed in the year 2018, this Court directs the V Additional Principal Judge, Family Court, Chennai, to dispose HMOP No.3797 of 2018 within a period of four months on merits without giving any unnecessary adjournments by affording sufficient opportunities to either side to put forth their contentions either by oral or documentary evidences.

8. With the above discussions, this Civil Revision Petition is dismissed.

No costs.

28.07.2023

Index : Yes/No

Internet : Yes

cp/vsn

To

The V Additional Principal Family Judge,
Chennai.



WEB COPY



CRP (PD) No.2033 of 2023

K.GOVINDARAJAN THILAKAVADI

cp/vsn

Pre-deliver order made in
CRP (PD) No.2033 of 2023

28.07.2023