



WEB COPY



C.M.SA.No.90 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.SA.No.90 of 2022

M.Venkatesan

...Appellant/Petitioner

Versus

V.Hemalatha

...Respondent/Respondent

PRAYER : Civil Miscellaneous Second Appeal has been filed under Order XIII Rule1 R/W Sec 100 of Civil Procedure Code, 1908 against the judgment and decree dated 20.11.2021 made in H.C.M.A.No.2 of 2020 on the file of the II Additional District Judge Vellore @ Ranipet confirming the order and decree dated 02.11.2017 made in H.M.O.P.No.92 of 2017 (F.C.O.P.No.45 of 2015 on the file of the Family Court Vellore) on the file of the Subordinate Judge, Ranipet, Vellore District.

For Appellant : Mr.T.Danyakumar
For Respondent : Mr.C.Harish



C.M.SA.No.90 of 2022

JUDGMENT

The above appeal has been filed challenging the Judgment and decree dated 20.11.2021 in H.M.C.M.A.No.2 of 2020 passed by the learned II Additional District Judge, Vellore at Ranipet confirming the order and decree dated 02.11.2017 in H.M.O.P.No.92 of 2017 of the Subordinate Judge, Ranipet, Vellore District.

2. The brief facts leading to the above appeal are as follows:-

(a) The appellant filed a petition for divorce on the ground of cruelty before the Family Court, Vellore (subsequently, it was transferred to the learned Subordinate Judge, Ranipet) stating that the respondent herein never gave respect to the elders and she had voluntarily left the matrimonial home and; that they were living separately for more than 4 ½ years.

(b) The respondent filed H.M.O.P.48 of 2015 on the file of the learned Subordinate Judge, Ranipet, Vellore for restitution of conjugal rights.

(c) Both the petitions were tried together. The petition filed by the respondent for restitution of conjugal rights was allowed as there was no representation on the side of the appellant. Similarly, the petition filed by the appellant for divorce was dismissed on the ground that he did not appear



C.M.SA.No.90 of 2022

in spite of several opportunities before the learned Subordinate Judge,

Ranipet, Vellore.

(d) The appellant filed an appeal in C.M.A.No.2 of 2020 before the II Additional District Judge, Vellore, against the common order passed by the learned Subordinate Judge, Ranipet, Vellore dismissing his petition for divorce and allowing the respondent's petition for restitution of conjugal rights. The said appeal was dismissed on the ground that the appellant deliberately did not participate in the proceedings before the learned Subordinate Judge, Ranipet Vellore in spite of several notices and opportunities given to him. Therefore, the learned District Judge dismissed the appeal.

(e) The above appeal has been filed against the order passed by the learned District Judge.

3.Heard, the learned counsel for the appellant as well as the respondent.



C.M.SA.No.90 of 2022

4.The learned counsel for the appellant submitted that no opportunity was given to him to substantiate his case hence, he may be given one more opportunity to put forth his case as the case was decided on merits in his absence. The learned Counsel further submitted that pursuant to the transfer of his case from Family Court, Vellore to learned Subordinate Judge, Ranipet, no notice was given to him.

5. The learned counsel for the respondent per contra, submitted that the above appeal is vexatious. The appellant was aware of the proceedings before the learned Subordinate Judge, Ranipet, Vellore as he was aware of the transfer. He had participated in the transfer proceedings before the High Court in Tr.C.M.P.No.331 of 2015 and hence, his contention that no notice was issued to him cannot be countenanced. The learned Counsel in any case, submitted that there is no substantial question of law involved in the instant appeal.

6.This Court finds that admittedly, the appellant filed divorce proceedings before the Family Court, Vellore. Thereafter, it was transferred pursuant to the orders passed by this Court in Tr.C.M.P.No.331 of 2015.



C.M.SA.No.90 of 2022

The appellant had participated in the said proceedings. Therefore, he cannot plead ignorance of the transfer of his petition to the learned Subordinate Judge, Ranipet, Vellore. That apart, the learned District Judge has extracted in the order, the dates on which the notices were sent to the appellant by the Sub-Court, by registered post. Therefore, several opportunities were given to the appellant. The appellant was aware of the proceedings and yet he chose to remain absent and the Courts below rightly dismissed his petition for divorce and allowed the petition for restitution of conjugal rights.

7. This Court is of the view that the factual finding given by the Courts below are based on records and cannot be faulted. Hence, no interference is called for.

8. That apart, this Court finds that the appellant has not raised any substantial question of law to warrant interference by this Court in the second appeal. The questions raised by the appellant are not questions of law much less substantial questions of law. They are factual in nature.

9. For the above reasons, this Court finds that the Judgment and decree passed by the learned II Additional District Judge, Vellore in



C.M.SA.No.90 of 2022

H.C.M.A.No.2 of 2020 dated 20.11.2021 confirming the order and decree passed by Subordinate Judge, Ranipet, Vellore District in H.M.O.P.No.92 of 2017 dated 02.11.2017 deserves to be confirmed.

10. With the above observation, Civil Miscellaneous Second Appeal is dismissed. No Costs.

28.07.2023

dk

Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

Copy to:

- 1.The II Additional District Judge
Vellore @ Ranipet
2. The Subordinate Judge,
Ranipet
Vellore District.



WEB COPY



C.M.SA.No.90 of 2022

SUNDER MOHAN, J

dk

C.M.A.No.90 of 2022

Dated: 28.07.2023