



C.M.A.No.156 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.04.2023
Pronounced on	16.06.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND**

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.156 of 2023

R.Deepa

...Appellant

Vs.

N.Unnikrishnan

...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984, against the fair and decreetal order dated 25.11.2022 made in H.M.O.P.No.1343 of 2014 passed by the learned V-Additional Principal Judge, Family Court, Chennai

For Appellant : Mrs.Chitra Sampath
Senior counsel
for R.Sunil Kumar



C.M.A.No.156 of 2023

For Respondent : Ms.R.Thenmozhi

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JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

This appeal arise out of the fair and decreetal order against the judgement and decree dated 25.11.2022 passed by the learned Vth Additional Principal Judge, Family Court, Chennai, in O.P.No.1343 of 2014 filed by the husband for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 for dissolution of marriage, against the wife. Earlier the wife has filed M.C.No.348 of 2013 for maintenance. The learned Judge, Family Court, has passed Common order in M.C.No.348 of 2013 and in O.P.No.1343 of 2014.

2. In the impugned order the learned Judge, Family Court granted a decree for divorce on the ground of cruelty in O.P.No.1343 of 2014 and also directed the husband to pay a sum of Rs.25,000/- per month to the wife and a sum of Rs.30,000/- per month to the child on or before 5th day of every English Calendar month. Aggrieved by the order of divorce passed in O.P.No.1343 of 2014, the wife is on appeal.



C.M.A.No.156 of 2023

3. According to the learned counsel for the appellant/wife, the Family Court erred in treating the evidence recorded in the maintenance case filed by the wife as evidence in the divorce O.P, when she had been examined and cross examined even as early as 17.10.2019 while the order of the Family Court for a joint trial was made only on 15.02.2020. The Family Court Judge erred in not allowing the appellant/wife to let in evidence in support of her counter affidavit in the divorce petition which was filed only on 23.11.2020. The further contention of the learned counsel is that the husband was examined in full. But the wife was not examined in the divorce petition. Inspite the wife filed I.A.Nos.9 & 10 of 2021 for reopen and recall, the Family Court failed to afford sufficient opportunity to the wife to prove her contentions, which is against the principles of natural justice. Hence, prays for setting aside the judgement and decree dated 25.11.2022 passed in H.M.O.P.No.1343 of 2014.

4.On the other hand, the learned counsel for the respondent/husband would submit that the trial Judge after giving sufficient opportunities to the parties passed the impugned order, which calls for no interference.

5.On perusal of the records, it is seen that the evidence adduced by the wife in M.C.No.348 of 2013 was adopted by the Family Court in O.P.No.1343 of



2014. It is also seen that, the Family Court Judge has granted a decree for divorce while, the reopen petition filed by the wife in I.A.No.9 of 2021 is still pending and no opportunity was given to the wife for marking the documents which was permitted to be received vide order in I.A.No.10 of 2021. While disposing of the main O.P for divorce, the family Court ought to have given sufficient opportunity to the wife to prove her case of defence. Moreover, the wife has filed the maintenance case in the year 2013 and the husband has filed the divorce only in the year of 2014. The evidence of the wife in the M.C petition, admittedly was recorded even as early as 17.10.2019 before a joint trial was ordered. Without giving sufficient opportunity to adduce evidence by the wife in the divorce petition, the Family Court Judge erred in adopting the evidence recorded in the maintenance case.

6. Under Order 41 Rule 23 CPC, when the Appellate Court disagree with the findings of the trial Court, the case can be remanded back to the trial Court for fair adjudication in the interest of justice. It is an enabling provision which confers a discretionary jurisdiction on the Appellate Court. A careful scrutiny of the judgment of the Family Court shows that the findings of the Family Court cannot



C.M.A.No.156 of 2023

be supported and must be set aside. Without giving sufficient opportunity to the appellant/wife to adduce evidence in the divorce petition, the family Court has passed the above impugned order in a hasty manner. Accordingly, the judgment and decree passed by the learned Judge, Family Court in O.P.No.1343 of 2014 is set aside and the matter is remanded back to the concerned Family Court for a fresh consideration after affording sufficient opportunities to both parties and dispose the case within a period of three months from the date of receipt of the copy of this order.

7. Accordingly, the above Civil Miscellaneous Appeal stands disposed of.
No costs.

(D.K.K.,J.) (K.G.T.,J.)

.06.2023

vsn
Internet: Yes/No
Index: Yes/No

To:-

The Vth Additional Judge, Family Court, Chennai



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C.M.A.No.156 of 2023

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C.M.A.No.156 of 2023

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