



WEB COPY



C.R.P.No.318 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.318 of 2023
and CMP.No.2696 of 2023

S.Geetha

... Petitioner

Vs

G.Thulasidaran

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the docket order dated 17.12.2022 made in I.A.SR.No.3159 of 2022 in F.C.O.S.No.5 of 2021 on the file of the Family Court, Chengalpattu.

For Petitioner : Mr.D.R.Arun Kumar

For Respondent : No Appearance
[Respondent served]

ORDER

This revision is preferred challenging the order dated 17.12.2022 passed by the learned Judge, Family Court, Chengalpattu in I.A.SR.No.3159



C.R.P.No.318 of 2023

of 2022 in F.C.O.S.No.5 of 2021.

WEB COPY

2. The petitioner has presented a suit in F.C.O.S.No.5 of 2021 pleading that there was no marriage held between her and the respondent, and therefore the certificate dated 29.04.2021 that has been issued declaring that there has been a marriage, is null and void. It is her primary contention that the marriage alleged to have been performed on 31.03.2021, never took place and therefore, the certificate issued on that basis cannot be countenanced.

3. On service of summons, the defendant had entered appearance and he had filed a detailed written statement. According to him, the marriage had taken place at his residence on 31.03.2021, and this factum has been reflected in the certificate.

4. Taking advantage of the written statement filed by the defendant, a petition was taken out by the plaintiff/revision petitioner under Order XVIII Rule 1 of the Code of Civil Procedure, seeking for a direction to direct the defendant to enter the witness box first and depose his case. This petition was filed on 13.12.2022. It was filed after service of notice on the



C.R.P.No.318 of 2023

respondent-husband. The respondent counsel made the following endorsement :

*" Pray time for counter. Received. For Respondent counsel.
Signed 13.12.2022."*

5. The said petition filed by the plaintiff/revision petitioner was rejected at the SR stage itself by the learned Judge on 17.12.2022. Aggrieved by which, the present revision.

6. This Court, vide its order dated 22.02.2023, has ordered notice to the respondent and granted interim stay of the proceedings before the Family Court. Though summons had been served on the respondent, he had not appeared either through a counsel or in person to oppose the revision.

7. Mr.D.R.Arun Kumar, learned counsel appearing for the petitioner relied on the judgment of this Court in ***R.Anita Marginic Vs R.Annadurai, [(1992) 1 LW 194]***, and would draw my attention to paragraph No.10 of the said judgment. Apart from that, he also invited my attention to the adjudication proceedings of the case at hand before the Family Court at



C.R.P.No.318 of 2023

Chengalpattu.

WEB COPY

8. A perusal of the said adjudication report would show that the suit in F.C.O.S.No.5 of 2021 was called on 13.12.2022, and it was adjourned to 20.12.2022. He would state that on 17.12.2022, there was no hearing, but the order reads as if the petition was rejected on that date. He would also state that prior to the passing of the order, neither the petitioner nor her counsel was heard. Therefore, they did not have an opportunity to produce a copy of the judgment of this Court referred above before the learned Family Court.

9. The position of law as regards the disposal of an unnumbered application had been dealt with by Hon'ble Mr. Justice N.Seshasayee in ***Selvaraj Vs Koodankulam Nuclear Power Plant India, [2021 (3) LW 677]***. His Lordship had held that prior to the disposal of the application, notice has to be ordered to the respondent, a counter has to be received from the respondent if he/she desires to file one, and after hearing the parties, the Judge should dispose of the application. He had specifically held that judicial orders must not be passed as if they are ministerial in nature.



WEB C

10. Applying the law laid down by the learned Judge in ***Selvaraj Vs Koodankulam Nuclear Power Plant India case*** to the facts of the present case and going through the adjudication proceedings that has been filed before me, it is clear that on 17.12.2022, there was no hearing. On that date, if the parties were not aware that their matter is going to be called and yet the Court proceeds to pass an order, it would be a travesty of justice. One of the hallmarks of adjudicatory process is to adhere to the principles of natural justice, in particular to the principle of *audi alteram partem*. Rejection of a petition without giving an opportunity of hearing to the parties does not meet the requirements of fairness. Therefore, the learned Trial Judge ought to have numbered the petition, received a counter from the respondent if any, heard the arguments, and thereafter, should have passed an order. Consequently, the order dated 17.12.2022 passed in I.A.SR.No.3159 of 2022 in F.C.O.S.No.5 of 2021 is set aside.

11. The learned Judge, Family Court, Chennai is now required to number the petition, receive the counter as per the endorsement so made by the learned counsel for the respondent, and thereafter proceed to pass an order. While passing the order, the learned Judge may take into



C.R.P.No.318 of 2023

consideration the judgment in *R.Anita Marginic Vs R.Annadurai, (1992) 1*

WEB COPY **LW 194**, relied on by the petitioner.

12. With the above observation, this civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.06.2024

Index:Yes/No

Internet : Yes / No

Speaking order / Non-speaking order
ds

To:

1.The Judge
Family Court, Chennai.

2.The Section Officer
VR Section, High Court, Chennai.



WEB COPY



C.R.P.No.318 of 2023

V.LAKSHMINARAYANAN,J.

ds

C.R.P.No.318 of 2023

04.06.2024