



C.R.P.(PD)No.905 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.905 of 2022

and

C.M.P.No.4616 of 2022

Ramaraja

.. Petitioner

Vs.

Latha

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in connected with E.P.No.46 of 2016 in O.P.No.45 of 2010 on the file of the learned V Additional Family Court at Chennai dated 17.09.2021.

For Petitioner : Mr.S.Sabariesh

For Respondent : Mr.P.N.George Graham

ORDER

This is a revision which arises against the order passed in E.P.No.46 of 2016 in O.P.No.45 of 2010 on the file of the learned V Additional Family Court at Chennai.



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2. O.P.No.45 of 2010 is a petition filed for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. A decree was passed in the said suit on 05.10.2010. Subsequently, the husband had filed a petition to divorce the wife in H.M.O.P.No.1151 of 2010 and an *ex parte* decree of divorce had been obtained. To set aside the said *ex parte* decree, an application was filed by the wife and the *ex parte* decree was also set aside on 28.11.2015.

3. As the decree in O.P.No.45 of 2010 dated 05.10.2010 was not complied with by the judgment debtor/civil revision petitioner, an Execution Petition was filed for attachment. The learned Family Judge by an order dated 17.09.2021 invoking the powers vested in her under Order XXI Rule 32 of the Code of Civil Procedure ordered attachment. Challenging the same, the present revision has been presented before this Court.

4. Heard Mr.S.Sabariesh, appearing on behalf of the petitioner and Mr.P.N.George Graham, appearing on behalf of the respondent.



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5. It is the contention of the civil revision petitioner that the husband had secured a *ex parte* decree and had got married subsequently. There is no point in pleading about the *ex parte* decree in the present situation because the *ex parte* decree that had been granted had been set aside by the very same Court which granted the decree. This restores the matrimonial position between the petitioner and the respondent. Once the position is restored, it is always open to the decree holder in O.P.No.45 of 2010 to execute a decree obtained by her on 05.10.2010.

6. Insofar as the Execution Petition is concerned, Order XXI Rule 32 of the Code of Civil Procedure directs that a decree in specific performance or for restitution of conjugal rights can be executed by attachment of the property. This is what the Execution Petition also seeks in the present case.

7. Therefore, I do not find any reasons to interfere with the order.

8. Accordingly, the Civil Revision Petition stands dismissed. The cost



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in the proceedings will follow the cost in the execution. Consequently,
connected Civil Miscellaneous Petition is closed.

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation: Yes/No

V. LAKSHMINARAYANAN, J.



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To

The V Additional Family Court,
Chennai

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