



C.R.P.No.2773 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2773 of 2022
and C.M.P.No.14580 of 2022

Mukesh Jain ... Petitioner

-Vs-

Kaushalya ... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 18.05.2022 passed in I.A.No.1987 of 2016 in O.P.No.3852 of 2015 passed by the VI Additional Principal Family Court, Chennai.

For Petitioner : Ms.S.P.Arthi

For Respondent : Party-in-Person

ORDER

This Civil Revision Petition arises against an order passed by the learned VI Additional Principal Judge, Family Court, Chennai in I.A.No.1987 of 2016 in O.P.No.3852 of 2015 dated 18.05.2022. Originally, O.P.No.3852 of 2015 had been presented as C.O.C.(Civil Original Case) No.268 of 2006 before the Family Court at Jodhpur. The Original Petition had been filed for the purpose of securing a decree of divorce. The decree of divorce was granted exparte on 29.11.2008. I.A.No.1987 of 2016 was filed to set aside the exparte decree. The said application was allowed



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against which the present revision.

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2. The relationship between the petitioner and the respondent is not in dispute. They got married on 17.05.1995 at Jodhpur. Between 17.05.1995 and 31.08.2003, they were residing in Jodhpur. On 01.09.2003, the husband and wife separated. The wife states that the husband had her remanded to police custody and this statement is denied by the husband. The truth or otherwise need not be gone into in this proceeding, as any finding given now will affect the main case. Suffice it to say that the husband and wife separated on the aforesaid date ie., on 01.09.2003.

3. Thereafter, on 16.10.2006, the husband filed a divorce petition as aforesaid before the Family Court at Jodhpur, State of Rajasthan. He had given the address of the wife as A36, Shastri Nagar, Jodhpur. In the meantime, it is the case of the wife that since she did not have any support in Jodhpur, she shifted her residence to Chennai. She had initiated maintenance proceedings under Section 125 Cr.P.C., before the Family Court at Chennai. In that maintenance proceedings, which was numbered as M.C.No.413 of 2007, she had given her address as No.3/5, Narayana Mudali Street, Chennai. In the proceedings before the Family Court at Chennai, the husband entered appearance and was aware of the address given by the wife. Despite being aware of the address, he filed an application in C.O.C.No.268 of 2006 stating that the wife is not traceable in the address given by



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him in the petition for divorce, and therefore sought for summons through substituted service. This application for substituted service was ordered. As substituted service had been effected, the Family Court in Jodhpur granted a decree for divorce exparte.

4. When these proceedings were pending, the wife initiated proceedings before the Family Court at Chennai in O.P.No.348 of 2011. This petition was for restitution of conjugal rights. When the O.P. was taken up for enquiry on 07.01.2012, the husband filed an application in I.A.No.55 of 2012 to receive the exparte decree that was passed by the Family Court at Jodhpur on 29.11.2008. Immediately on coming to know of the exparte decree of divorce, the wife moved an application before the Family Court at Jodhpur stating that the exparte decree of divorce had been obtained behind her back and it deserves to be set aside. Though the decree had been passed on 29.11.2008, she pleaded that she had filed the set-aside petition within 30 days from the date of knowledge of the exparte decree and that she had never been put on service of the divorce proceedings.

5. Thereafter, she moved an application for transfer before the Supreme Court seeking to transfer the proceedings from the Family Court at Jodhpur to the Family Court at Chennai. This transfer petition was numbered as Transfer Petition (Civil) No.23 of 2015 and was allowed on 01.07.2015. It is on the basis of that order, the proceedings were transferred from Jodhpur to Chennai. On being



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transferred to Chennai, the set-aside petition was numbered as I.A.No.1987 of 2016 and the original petition was re-numbered as O.P.No.3852 of 2015. The said proceedings were languishing from 2016 till 2022 when the learned Judge finally allowed the application and set aside the exparte order.

6. Before the trial Court, the wife viz., Mrs.Kaushalya Jain, Party-in-Person before me, was examined as P.W.1. She marked Exs.P1 to P28. On the side of the husband, Mr.Mukesh Jain examined himself as R.W.1. He marked Exs.R1 to R7. On the basis of these oral and documentary evidence, the learned Trial Judge came to the conclusion that the summons were never served on the wife and the husband had not given the correct address of the wife in the petition for divorce, and therefore set aside the exparte decree.

7. Heard Ms.S.P.Arthi for the petitioner and Mrs.Koushalya Jain, Party-in-Person for the respondent.

8. A perusal of the aforesaid facts would go on to show that the husband was aware of the fact that the wife had shifted from Jodhpur to Chennai and was then staying at Narayana Mudali Street, Sowcarpet, Chennai, which seems to be her permanent address. Therefore, even if he was not aware of the father-in-law's address at the time of filing C.O.C.No.268 of 2006, from the proceedings initiated M.C.No.413 of 2007 wherein the respondent herein had given her address at



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Chennai, the husband should have taken steps to amend the address and should have taken summons to the address which had been disclosed by her in the maintenance proceedings. However, he did not do so. He took a chance and continued to show as if she is a resident of Jodhpur, when factually she was not.

9. The respondent wife, through overwhelming evidence, has been able to demonstrate before this Court that she has never received the notice in the divorce proceedings. When a party is not put on notice and the exparte decree is passed as against the said party, then such decree is liable to be ripped open in case the party against whom the exparte decree has been passed is able to prove that the address to which the summons had been taken was a wrong address. This is the situation that prevails in the present case. Knowing pretty well that the wife is residing in Chennai, the husband had given an address in Jodhpur and had secured an exparte decree. Such a decree cannot be sustained for a party cannot take advantage of his own fault.

10. Ms.S.P.Arthi would contend that pursuant to the exparte decree, the husband had proceeded to get married again and from the second marriage, he has begotten a child. She would state that as the husband has married again, the Court should look in his favour and not in favour of the wife. This argument though tantalizing, I am not inclined to agree with the same. The husband was aware that the wife was not residing in Rajasthan, yet to mislead the Court, he gave the



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address in Rajasthan in order to obtain a decree of divorce. In case the wife is incommunicado or the husband could not have found out the address after due diligence, I would have then considered the case of the husband. However, that is not the situation here. The husband was well aware that the wife is residing at Narayana Mudali Street, Sowcarpet, Chennai because he received the summons in the maintenance proceedings before he obtained the ex parte decree. Therefore, the wrong doer in this case is the husband and not the wife. Taking a chance, he had proceeded to enter into another matrimony. If I were to allow the revision of the husband on the ground that he had got married again, it would amount to giving a premium for a wrongful behaviour.

11. Having suppressed the actual address of the wife, I am not inclined to interfere with the order of the learned Trial Judge. Therefore, the factum that he had married again taking advantage of an ex parte decree, which he obtained on the basis of giving a wrong address, does not persuade me to come to his rescue. Consequently, C.R.P.No.2773 of 2022 is dismissed. As the husband has been prolonging the litigation, the wife will be entitled to costs in the revision. Consequently, connected miscellaneous petition is closed.

12. However, before parting with the case, I am inclined to draw timelines for the disposal of O.P.No.3852 of 2015. The cross examination of P.W.1 shall commence on 03.05.2024, and time is granted till 31.07.2024 to complete the cross



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examination. The petitioner / husband shall file the proof affidavits of all the witnesses in the interregnum. Cross examination of the other witnesses will commence on 05.08.2024, and should be completed before 30.11.2024. The learned Trial Judge shall pronounce the judgment on or before 20.12.2024 and shall submit a report. I am fixing the aforesaid time limit because the matter is pending from 2006 onwards and the parties should know where their status lies at the earliest.

24.04.2024

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Index : Yes/No

Neutral Citation : Yes/No

KST

Note : Issue order copy on 29.04.2024

To

The VI Additional Principal Family Court
Chennai.



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V. LAKSHMINARAYANAN, J.

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