



C.M.A.No.2966 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2024

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.2966 of 2024

S.Ezhilarasan

...Appellant

Vs.

K.Gomathi

...Respondent

Civil Miscellaneous Appeal filed under Section XLIII Rule 1(d) of Civil Procedure Code, challenging the fair and final order dated 18.07.2024 passed by the Learned I Additional Family Court, Chennai in I.A.No.04 of 2023 in OP.No.1567 of 2013.

For Appellant : Mr.L.Mouli

For Respondent : Mr.S.Chakkaravarthi

### **JUDGMENT**

This Civil Miscellaneous appeal has been filed challenging the fair and final order dated 18.07.2024 passed by the I Additional Family Court,



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Chennai in I.A.No.04 of 2023 in OP.No.1567 of 2013.

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2. Mr.S.Chakkaravarthi, learned counsel takes notice on behalf of the respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. The case of the appellant is that, the marriage between the appellant and the respondent was solemnised on 06.03.2011 and out of the wedlock, no child was born to them. Whiles, due to some difference of opinion, they got separated within 5 ½ months from their marriage. Thereby, the appellant filed a divorce petition in HMOP.No.121 of 2013 before the Family Court, Coimbatore. Immediately upon receipt of the said divorce petition, the respondent/wife, with a malafide intention to drag on the proceedings, filed the restitution of conjugal rights petition in OP.No.1567 of 2013 and obtained a exparte decree on 01.07.2023. Aggrieved by the same, the appellant filed I.A.No.4 of 2023 seeking to set aside the exparte order dated 01.07.2023. However, the lower court, without



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considering any of the above said facts had dismissed the same, vide

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impugned order dated 18.07.2024. Challenging the same, the appellant has come up with this appeal.

4. Learned counsel for the appellant submitted that, the trial court erred in holding that, the appellant has not stated any reason for his non-appearance and immediately after the appellant was set exparte on 05.09.2022, he had earlier filed I.A.No.1 of 2022 and as he was unable to pay the cost as ordered by the trial court, he filed extension petition, however, the same was mechanically dismissed by the trial court and the non appearance of the appellant before the trial court is neither wilful nor wanton and the trial court ought to have granted an opportunity to the appellant to contest the case on merits by allowing the petition seeking to set aside the exparte order. Learned counsel further submitted that, the appellant is ready to comply with any condition that may be imposed by this Court. Accordingly, he prayed for appropriate orders.



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5. On the above said contentions, heard learned counsel appearing on behalf of the respondent and perused the material documents placed on record.

6. On a perusal of the materials available on record particularly the impugned order, it is evident that, the respondent filed a restitution of conjugal rights petition in OP.No.1567 of 2013 and for non appearance of the appellant, he was set exparte on 05.09.2022, challenging the same, the appellant filed I.A.No.1 of 2022 and the same was initially allowed on condition to pay Rs.2,000/- on or before 23.01.2023, however, as the appellant failed to comply with the said order, the I.A.No.1 of 2022 was subsequently dismissed. Once again, the appellant filed I.A.No.2 of 2023, which was also dismissed and thereafter, the main case was proceeded and final order came to passed on 01.07.2023. Thereafter, the appellant filed I.A.No.4 of 2023 seeking to set aside the exparte order dated 01.07.2023, which was dismissed, vide impugned order dated 18.07.2024.



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7. Though it is the claim of the appellant that, without hearing him, an exparte order came to be passed on 01.07.2023, however, it is pertinent to note that, the restitution of conjugal rights petition was filed by the respondent in the year 2013 and he was set exparte only on 05.09.2022, after a lapse of 9 years and no proper reason has been stated for his non appearance at the stage of respondent side evidence in OP.No.1567 of 2013 and it is very much evident that, only after affording sufficient opportunity, he was set exparte. When the appellant challenges the exparte order, moreso, when it was dismissed for his non-appearance, a duty is cast on the appellant to explain the circumstances leading to his non-appearance. However, there is no material evidencing the reason for his non-appearance and in fact, he was awarded an opportunity to pay cost, which also the appellant failed to comply and, therefore, only in that backdrop, the court below had dismissed the said petition, which reason cannot be said to be erroneous.

8. Further, already the appellant filed I.A.Nos.1 of 2022 & 2 of 2023,



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challenging the order dated 05.09.2022 in and by which the appellant was set exparte, and the said applications were dismissed by the lower court.

While so, without challenging the said orders, filing the present appeal challenging the subsequent order dated 18.07.2024 made in I.A.No.4 of 2023 filed seeking to set aside the exparte order dated 01.07.2023 made in OP.No.1567 of 2023 is not sustainable and the said act of the appellant is nothing but an attempt to drag on the case, in order to avoid living with respondent and therefore Court is not inclined to entertain the said act of the appellant. Hence, this Court is not inclined to interfere with the order impugned in this appeal.

9. For the reasons aforesaid, this Appeal stands dismissed. There shall be no order as to costs in this appeal.

**14.11.2024**

skt

NCC : Yes/No  
Index : Yes/No  
Speaking order : Yes/No



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To:

The I Additional Family Court,  
Chennai.



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**M.DHANDAPANI, J.**

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