



C.R.P.(MD)No.615 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2024

CORAM:

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(MD)No.615 of 2020

R.Selvi

... Petitioner

Vs.

K.Rajkumar

... Respondent

PRAYER : Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 07.12.2016 passed in I.A.No.137 of 2016 in H.M.O.P. 6/2003 on the file of Sub Court, Thirumangalam confirmed in C.M.A.No. 2/2017 dated 04.04.2019 on the file of IV Additional District Judge Madurai by allowing this revision.

For Petitioner : Mr.S.Mahesh Babu

For Respondent : No appearance



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ORDER

The petitioner herein is the respondent in H.M.O.P.No.6 of 2003. The said H.M.O.P was filed by the respondent herein on the file of the Court of Subordinate Judge, Tirumangalam Camp Court, seeking dissolution of marriage under Section 13 (1)(ia)(ib) of the Hindu Marriage Act, 1955. The said H.M.O.P was decreed by a decree dated 18.09.2013. In the said H.M.O.P proceedings, the petitioner did not participate at the final stage of the said proceedings. However, the learned Subordinate Judge, Tirumangalam Camp Court, passed a decree on 18.09.2013 by writing an elaborate order on merits, though the petitioner was set *exparte*.

2. A perusal of the order also shows that the petitioner herein remained *exparte* in the said H.M.O.P. Under those circumstances, the petitioner herein filed I.A.No.137 of 2016 under Order IX Rule 13 of C.P.C, to set aside the *exparte* decree, dated 18.09.2013, passed in H.M.O.P.No.6 of 2003. The said application was dismissed by the trial Court on the ground that the petitioner herein failed to assign sufficient reason to set aside the *exparte* decree.



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3. Aggrieved by the same, the petitioner filed C.M.A.No.2 of 2017 on the file of the Court of IV Additional District Judge, Madurai. The said Civil Miscellaneous Appeal was dismissed by the lower Appellate Court on the ground that the judgment and decree dated 18.09.2013 that was passed in H.M.O.P.No.6 of 2003 was on merits, but not under Order 17 Rule 2 of C.P.C. Hence, the lower Appellate Court came to the conclusion that the application filed Order IX Rule 13 of C.P.C, to set aside the *exparte* decree is not maintainable.

4. Aggrieved by the said order dated 04.04.2019 passed in C.M.A.No.2 of 2017, the present Civil Revision Petition is filed.

5. This matter earlier came up for consideration on 16.02.2024 and 29.02.2024 and this Court heard the learned counsel for the petitioner. There is no representation for the respondent on previous dates of hearing as well as today.



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6. It is the contention of the learned counsel for the petitioner that the trial Court while considering the application Order IX Rule 13 of C.P.C came to the conclusion that the petitioner herein failed to assign sufficient reason for setting aside the *exparte* judgment and decree. But, the lower Appellate Court instead of examining the matter on merits, without affording any opportunity, passed the order under revision by concluding that Order IX Rule 13 of C.P.C. application itself is not maintainable, as the judgment and decree passed in H.M.O.P.No.6 of 2003 was on merits. Thus, it is the contention of the learned counsel for the petitioner that without affording any opportunity, the lower Appellate Court came to the conclusion that the application under Order IX Rule 13 of C.P.C. is not maintainable and holding that the appropriate remedy to the petitioner is to file an appeal against the judgment and decree, dated 18.09.2013.

7. As seen from the order passed by the trial Court in I.A.No.137 of 2016, there is no issue that came up for consideration as to the maintainability of application under Order IX Rule 13 of C.P.C. The said order dated 07.12.2016



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in I.A.No.137 of 2016 is only on the merits and on coming to the conclusion that the petitioner failed to assign sufficient reasons to set aside the *exparte* decree, the said application was dismissed. As to the maintainability of application under Order IX Rule 13 of C.P.C is concerned, it is not the subject matter before the trial Court in I.A.No.137 of 2016. Obviously, the said issue, in normal circumstances, would not arise for consideration before the lower Appellate Court, but, as contended by the learned counsel for the petitioner, the said question was never put to the petitioner herein to satisfy the lower Appellate Court about the maintainability of application under Order IX Rule 13 of C.P.C., in the facts and circumstances of the case on hand.

8. From the material available on record, especially, the order passed under revision, it is noticed that no submissions made on behalf of the petitioner herein about the maintainability of application under Order IX Rule 13 of C.P.C. neither considered nor stated to have been made before the lower Appellate Court. In the light of the above, and for want of representation for the respondent, this Court is left with no other option except to accept the



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submission of the learned counsel for the petitioner on the point of not affording any opportunity and to set aside the order under revision passed by the lower Appellate Court.

9. In the circumstances, this Court is of the considered view that it is a fit case for remanding the matter back to the lower Appellate Court with a further direction to afford an opportunity to the petitioner herein before the lower Appellate Court to satisfy about the maintainability of application under Order IX Rule 13 of C.P.C. Accordingly, the order under revision is set aside and the matter is remitted back to the Court of the IV Additional District Judge, Madurai, for deciding the matter afresh, by affording reasonable opportunity to both parties.

10. Considering the fact that the judgment and decree and H.M.O.P is of the year 2003, the lower Appellate Court is requested to dispose of the C.M.A.No.2 of 2017, as expeditiously as possible at any rate within a period of two months from the date of receipt of copy of this order. This Civil Revision



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Petition is allowed to the extent indicated above. There shall be no order as to costs.

07.03.2024.

Neutral Citation: Yes / No
Index : Yes / No
Internet : Yes/No
LS

To

- 1.The IV Additional District Judge,
Madurai.
- 2.The Sub Court,
Thirumangalam.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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MUMMINENI SUDHEER KUMAR, J.

LS

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