



C.M.A(MD)No.11 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.11 of 2017

and

C.M.P(MD)No.154 of 2017

J.R.Ani

... Appellant/Petitioner/
Respondent

Vs.

Santhosh

... Respondent/Respondent/
Petitioner

Prayer: Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act, to set aside the fair and decretal order, dated 16.08.2016 passed in I.A.No.124 of 2015 in I.D.O.P.No.74 of 2014 on the file of the District Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.M.Saravanan

For Respondent : Mr.C.Godwin

JUDGMENT

The present appeal has been filed by the wife challenging the rejection of an application by the trial Court to set aside the *ex parte* decree of divorce.



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2. The respondent herein had filed I.D.O.P.No.74 of 2014 seeking divorce. Pending the said application, the wife was set *ex parte* on 24.03.2015. She had filed I.A.No.124 of 2015 on 26.03.2015 to set aside the *ex parte* decree. The said application was numbered on 30.04.2015.

3. Eventhough the application to set aside the *ex parte* decree was filed in time, the trial Court had dismissed the said application on the ground that the husband had contracted second marriage on 01.05.2015. In view of the second marriage of the husband, the application filed under Order IX Rule 13 of Code of Civil Procedure Code was dismissed by the trial Court without going into the merits of the said application. Challenging the same, the present appeal has been filed by the wife.

4. According to the learned counsel appearing for the appellant, the application to set aside *ex parte* decree was filed within 2 days from the date of passing of the *ex parte* decree. It is alleged that the husband has got remarried on 01.05.2015 before New India Church of God. Therefore, he should have placed a notice before the concerned Church atleast 15 days prior to his marriage. In such circumstances, it is clear



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that he got re-married prior to the expiry of 30 days from the date of *ex parte* decree.

5. Per contra, the learned counsel appearing for the respondent/ husband has contended that the application under Order IX Rule 13 of Code of Civil Procedure was numbered only on 30.04.2015 and without having knowledge about the numbering of the said application, the second marriage was contracted on 01.05.2015. Hence, he prayed for dismissal of the appeal.

6. I have carefully considered the submissions made on either side and perused the material records.

7. It is borne out of records that within 2 days from the date of passing of the *ex parte* decree of divorce, the wife has filed an application to set aside the *ex parte* decree. However, the husband has contracted the second marriage on 01.05.2015. The trial Court had dismissed the application under Order IX Rule 13 of Code of Civil Procedure merely on the sole ground that the husband has got re-married. The Hon'ble Supreme Court in a judgment reported in **2011 (3) SCC 545**



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(*Parimal Vs. Veena @ Bharti*) has held that the conduct of one of the parties subsequent to the passing of the *ex parte* decree shall not be taken into consideration for the purposes of deciding an application under Order IX Rule 13 of Code of Civil Procedure.

8. In view of the above said facts, the order in I.A.No.124 of 2015 is set aside and the matter is remitted back to the file of the trial Court for considering I.A.No.124 of 2015 on merits and in accordance with law. With the said observation, this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

15.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The District Court,
Kanyakumari at Nagercoil.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.



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Judgment made in
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