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C.M.A.No.2046 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06.01.2025
Pronounced on	19.02.2025

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.2046 of 2024
and
C.M.P.No.1571 of 2024

Rebacca @ Gajalakshmi
W/o.F.David Bronson
Residing at No.45, Veerakutty Street,
Old Washermenpet, Chennai-600 021.

... Appellant/Petitioner

-VS-

F.David Bronson,
S/o.D.Fedrick Ezciel,
No.15, Montieth Road,
Egmore, Chennai.

... Respondent/Respondent

Prayer: Appeal is filed under Section 19 of the Family Courts Act, 1984 to set aside the judgment and decree passed in I.D.O.P.No.926 of 2020 dated 19.12.2023 on the file of III Additional Principal Family Court, Chennai.



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For Petitioner : Mr.Ramesh Kumar Chopra

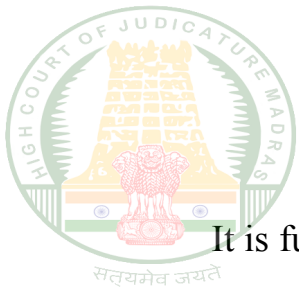
For Respondent : Mr.N.Mariappan

J U D G M E N T

(By J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/wife who lost her case for restitution of conjugal rights in IDOP.No.926 of 2020, whereby, the learned III Additional Principal Family Court, Chennai, held that the respondent/husband already obtained order of divorce and got married to one G.Jothi Lakshmi and he is paying monthly maintenance to the appellant/wife as per the order of the Court.

2. The appellant/wife filed IDOP.No.926 of 2020. The averments in the IDOP are that the marriage between the appellant/wife and the respondent was solemnized on 13.12.2007; they were blessed with a son; the respondent/husband abandoned her and son and filed O.P.No.1848 of 2010 for divorce; the said petition was dismissed for default on 21.01.2019.



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It is further averred that she filed M.C.No.344 of 2013, wherein, the learned Judge ordered to pay a sum of Rs.2,000/- per month each to the appellant and her son. According to the appellant/wife, she prayed in the IDOP that she wants to live with the respondent/husband.

3. In the above said IDOP, respondent/husband filed counter affidavit, denying the allegations of the wife. The wife's submission that divorce petition filed by the husband was dismissed for non prosecution was not correct. In the divorce petition filed by the husband, though the appellant/wife appeared before the Family Court initially, she had not chosen to cross examine the husband and later she remained absent. Therefore, an *ex parte* decree of divorce was granted to the respondent/husband. Further, the appellant/wife has not challenged the decree of divorce till date. This CMA has been filed only to harass the respondent.

4. The respondent/husband also submitted that he had been paying the monthly maintenance regularly.



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WEB COPY 5. In the additional counter affidavit filed by the husband, it was stated that after getting the divorce from the IV Additional Family Court, Chennai and after completion of appeal period, he had married one V.Jothi Lakshmi and the second marriage was duly registered and they were blessed with a son. Therefore, the petition for restitution of conjugal rights has been filed with an ulterior motive of harassing the respondent in order to get unlawful gain.

6. Learned counsel for the appellant/wife would submit that O.P.No.1848 of 2010 filed by husband was dismissed for non prosecution. Thereafter, no restoration petition was filed. The appellant is willing to live with the respondent/husband.

7. Learned counsel for the respondent would submit that an *ex parte* decree and judgment was passed in the husband's petition for divorce granting the relief of dissolution of marriage. The said judgment has not been challenged by the appellant / wife.



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WEB COPY 8. It is further contended that the order passed in O.P.No.1848 of 2010 had been marked in the IDOP filed by the wife and the learned Judge, after discussing the relevant points, dismissed the conjugal rights petition filed by the wife.

9. Heard both sides and perused the the materials available on record.

10. It is a matter of record that the husband had marked the Exparte order of Divorce dated 17.01.2018 as Ex.P4 in the IDOP filed by the wife praying conjugal rights. The Principal Family Court, Chennai, in the said IDOP, held that the petitioner/wife had not chosen to challenge the said exparte divorce order dated 17.01.2018.

11. As per the respondent, after the period of limitation to file an appeal in the divorce granted in his favour, he had contracted a second marriage with one V.Jothi Lakshmi and got a child.



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12. The Family Court has rightly held that the appellant, without challenging the exparte decree of divorce, has filed a petition before the Family Court for restitution of conjugal rights and further rightly concluded that the petition for conjugal rights is liable to be dismissed and accordingly dismissed the IDOP. It is also evident from records that the respondent has been paying the maintenance without any default and that has not been disputed by the appellant.

13. In view of the foregoing reasonings, this Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 19.12.2023 passed in I.D.O.P.No.926 of 2020 by the III Additional Principal Family Court, Chennai, is hereby upheld. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B.J.,) (R.S.V,J.,)
19.02.2025

Index: Yes / No
Internet: Yes / No
Speaking Order/ Non Speaking Order
ar/nvsri



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To
The learned III Additional Principal Family Court Judge,
Chennai.



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J.NISHA BANU,J.
and
R.SAKTHIVEL,J.

Ar/nvsri

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