



C.M.A.No.2100 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2025

CORAM

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

C.M.A.No.2100 of 2024 and
C.M.P.No.28999 of 2024

G.Anushya ..Appellant/Respondent
-vs-
R.Ramesh ...Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, 1984 r/w Section 28 of the Hindu Marriage Act to set aside the order dated 29.05.2024 passed in H.M.O.P.No.3102 of 2022 by the Hon'ble III Additional Principal Judge, Family Court at Chennai.

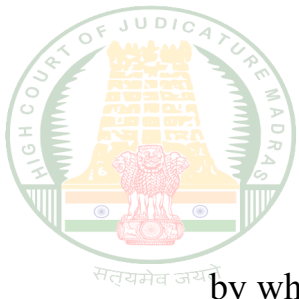
For Appellant : Mr.S.PS.Buddhan

For Respondent : Mr.S.K.Masthan

J U D G M E N T

(By J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed, seeking to set aside the order dated 29.05.2024 passed in H.M.O.P.No.3102 of 2022 by the Hon'ble III Additional Principal Judge, Family Court at Chennai,



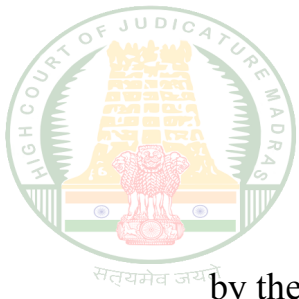
C.M.A.No.2100 of 2024

by which, the Family Court allowed the petition filed by the respondent / husband for divorce.

Brief Facts in nutshell:

2. The marriage between the appellant and the respondent was solemnized on 27.08.2015 as per Hindu rites and customs in Chennai and they have no issues. Due to difference of opinion arisen between them, the respondent / husband instituted a petition for divorce. Before the Family Court, the appellant / wife remained absent, pursuant to which, the Family Court passed an *ex parte* decree, thereby dissolving the marriage of the appellant and the respondent. Challenging the said *ex parte* order, the present appeal has been filed.

3. Learned counsel for the appellant submitted that the Family Court did not take into consideration the counter statement filed by the wife. The respondent / husband and his family members had caused mental agony and hardship to the appellant / wife, besides inflicting cruelty upon her. He further submitted that the respondent / husband acted indifferently and he has also disregarded the family members of the appellant/wife. Though several grounds have been raised



C.M.A.No.2100 of 2024

WEB COPY

by the learned counsel for the appellant in support of this appeal, the core contention raised is that the Family Court, without giving an opportunity of hearing to the appellant / wife, dissolved the marriage and therefore, prayed for remanding the matter back to the Family Court for fresh consideration.

4. Per contra, learned counsel for the respondent / husband vehemently contended that despite several opportunities granted to the appellant / wife, she had not chosen either to appear before the Family Court or to examine the witnesses. She adopted dilatory tactics in giving quietus to the issue. Though the petition to set aside the ex parte order filed by the wife was returned on 25.04.2024 for some minor correction, the petition was not re-presented till the date of passing final judgment and decree. Therefore, the Family Court set the appellant / wife ex parte and passed the ex parte order, dissolving the marriage. The order of dissolution is perfectly valid and does not need any interference.

5. Heard the learned counsel on either side



C.M.A.No.2100 of 2024

WEB COPY

6. From the order of the Family Court, it is seen that though the appellant / wife filed a counter statement, denying all the allegations levelled against her, she did not cast her appearance during enquiry. The appellant / wife immediately filed a petition before the Family Court to set aside the ex parte order, which was returned due to certain discrepancies in the prayer portion and thereafter, the petition was not re-presented.

7. We are of the view that in a case of this nature, viz., matrimonial dispute, the Family Court ought to have given an opportunity to the appellant / wife to contest the case on merits and unless the parties are heard, the Court cannot come to a definite conclusion as to who is really at fault. In this type of case, where emotions and feelings are involved, without hearing the otherside, an ex parte order cannot be passed based on the documentary evidence available on record. Moreover, the appellant / wife has also taken steps to restore the ex parte order and therefore, we find some force and substance in the argument of the learned counsel for the appellant.



C.M.A.No.2100 of 2024

WEB COPY

8. Accordingly, this Civil Miscellaneous Appeal is allowed and the dated 29.05.2024 passed in H.M.O.P.No.3102 of 2022 by the Hon'ble III Additional Principal Judge, Family Court at Chennai is hereby set aside. The matter is remitted to the III Additional Principal Judge, Family Court, Chennai with a direction to rehear the matter once again and dispose of the same on merits and as per law, within a period of three months from the date of receipt of a copy of this judgment, upon considering the oral submissions of the parties and evidence already on record. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B,J.) (R.S.V.,J.)
21.01.2025

ar

To:

III Additional Principal Judge,
Family Court,
Chennai.



WEB COPY



C.M.A.No.2100 of 2024

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

C.M.A.No.2100 of 2024

21.01.2025