



C.M.A(MD)No.117 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.09.2025

CORAM :

**THE HONOURABLE Mr. JUSTICE P.VELMURUGAN
and
THE HONOURABLE Mrs. JUSTICE L.VICTORIA GOWRI**

C.M.A. (MD)No.117 of 2020

Divya

... Appellant/Petitioner

vs.

Veeramani

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Court, Act against the fair and decreetal order in H.M.O.P.No. 164 of 2018 dated 13.01.2020 on the file of the Family Court, Dindigul.

For Appellant : Mr.M.R.Sreenivasan

For Respondent : Mr.S.Loganathan



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JUDGMENT

(Judgment was made by **P.VELMURUGAN. J.,**)

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order in H.M.O.P.No.164 of 2018 dated 13.01.2020 on the file of the Family Court, Dindigul.

2. The brief facts, which are necessary for disposal of this appeal are as follows:

i) The marriage between the appellant and the respondent solemnized on 05.09.2016. A dispute arose among themselves. The appellant/wife had been driven away to her parental house.

ii) The respondent/husband filed a petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights in H.M.O.P.No.103 of 2017 before the Family Court, Dindigul. An ex parte decree was granted on 10.07.2017. Thereafter, petition to set aside ex-parte order was allowed and H.M.O.P.No.103 of 2017 was restored.

iii) The appellant/wife filed a petition in H.M.O.P.No.164 of 2018



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for divorce on the ground of adultery, dowry demand and harassment invoking Section 13(1)(ia) of Hindu Marriage Act, 1955. The said petition was dismissed by the Family Court, Dindigul, on 13.01.2020.

The operative portion of the said order is extracted here under:

"No relief of divorce can be granted to the petitioner since she has not resumed to cohabitation with the respondent in obedience of the order passed in H.M.O.P.No.103 of 2017 on the file of the Family Court, Dindigul".

iv) Challenging the said order, the present appeal has been filed by the appellant/wife.

3. The learned counsel for the appellant/wife has raised the main ground that though exparte decree was granted in H.M.O.P.No.103 of 2017 on 25.10.2017, thereafter petition to set aside ex-parte order was filed and the same was allowed. Consequence thereof, H.M.O.P.No.103 of 2017 was restored. After hearing both sides, H.M.O.P.No.103 of 2017 filed by the husband for restitution of conjugal rights was dismissed on merits. Therefore, the sole reason to dismiss the divorce petition filed by the appellant/wife cannot be sustained.



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

5. Earlier, the respondent/husband filed a petition for restitution of conjugal rights in H.M.O.P.No.103 of 2017. An ex-parte order came to be passed. In the meanwhile, the wife filed a petition for divorce. After hearing both sides, the Family Court dismissed the divorce petition only on the sole ground that despite the respondent/husband got a decree for restitution of conjugal rights, the petitioner/wife did not co-operate for cohabitation and therefore, the relief sought for by the petitioner cannot be granted. Thereafter, a petition to set aside the order of ex-parte was filed by the appellant/wife and the issue was decided on merits as a result of which H.M.O.P.No.103 of 2017 filed by the husband for restitution of conjugal rights was dismissed.

6. The main ground for dismissal of the divorce petition filed by the wife is that the husband got a decree for restitution of conjugal rights. The said decree was nothing but exparte decree. However, the decree is not in force since the petition filed by the husband for



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restitution of conjugal rights was subsequently dismissed on merits. So as on date, no decree for restitution of conjugal rights is in force. Therefore the order passed by the Family Court in H.M.O.P.No.164 of 2018 dated 13.09.2020 is set aside and the matter is remitted back to the Family Court, Dindigul. The Family Court, Dindigul, is directed to decide the matter on merits and in accordance with law. Both parties are directed to extend their fullest cooperation for early disposal. If necessary, the parties are at liberty to take additional evidence regarding subsequent events, if any. Since it is the matrimonial matter, the Family Court, Dindigul, is directed to dispose the matter within a period of three months from the date of receipt of a copy of this judgment.

7. In fine, this appeal is allowed.

(P.V., J) (L.V.G., J)
10.09.2025

Index : Yes/No
Internet : Yes/No
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To,

The Family Court,
Dindigul.



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**P.VELMURUGAN, J
and
L.VICTORIA GOWRI, J.**

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