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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2026

CORAM:

**THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR**

**CMA Nos. 897, 961 of 2025
And
C.M.P.No. 7304 of 2025
And
C.M.A.No. 2021 of 2023
And
C.M.P.No. 19598 of 2023
And
C.M.P.No. 11706 of 2024**

C.M.A.No. 897 of 2025:

D.Anitha
D/o. Durai Rajan

... Appellant/Respondent

Vs

D.Kesavan
S/o. T.P.Devaraj

...Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act read with Section 28 of the Hindu Marriage Act, against the decree and Judgment in O.P.No. 3212 of 2015 dated 16.11.2022, on the file of the IV Additional Family Court, Chennai.

For Appellant : Mrs. S.Sridevi



For Respondent : M/s.C.P.Kavitha Ranjini

WEB CO **C.M.A.No. 961 of 2025:**

D.Anitha
D/o. Durai Rajan

... Appellant/Petitioner

Vs

D.Kesavan
S/o. T.P.Devaraj

...Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act read with Section 28 of the Hindu Marriage Act, against the decree and Judgment in O.P.No. 1772 of 2017 dated 16.11.2022, on the file of the IV Additional Family Court, Chennai.

For Appellant : Mrs. S.Sridevi

For Respondent : M/s.C.P.Kavitha Ranjini

C.M.A.No. 2021 of 2023:

D.Kesavan
S/o. T.P.Devaraj

... Appellant/Petitioner

Vs

D.Anitha
D/o. Durai Rajan

...Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act read with Guardian and Wards Act, against the order dated



16.11.2022 passed in O.P.No. 986 of 2019 on the file of the IV Additional Family Court, Chennai.

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For Appellant : M/s.C.P.Kavitha Ranjini

For Respondent : Mrs. S.Sridevi

J U D G M E N T

(Order of the Court was made by **C.V.KARTHIKEYAN, J.**)

All these three appeals emanate from a common order dated 16.11.2022 in O.P.Nos. 3212 of 2015, 1772 of 2017 and 986 of 2019 on the file of IV Additional Principal Family Court at Chennai.

2. O.P.No. 3212 of 2015 had been filed by the husband seeking dissolution of the marriage which had been solemnised between him and his wife on 16.02.2004. He seeks dissolution on the ground of cruelty /Section 13(1)(i-a) of Hindu Marriage Act 1955.

3. O.P.No. 1772 of 2017 had been filed by the wife under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights.

4. O.P.No. 986 of 2019 had been filed by the husband under Sections

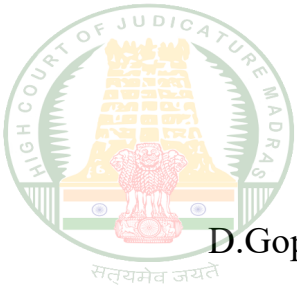


6 and 7 of the Hindu Minority and Guardianship Act, 1956 seeking custody of his minor boy and minor daughter, aged about 12 years and 7 years at the time of filing of the petition.

5. Even before proceeding further, it must be pointed out that the boy has now attained the age of 18 years and is now in a position to decide for himself and therefore, the issue of custody would not arise. However, the daughter is aged about 15 years and therefore, the issue of custody would survive so far as she is concerned.

6. By the common Judgment dated 16.11.2022 which had been passed more out of frustration, the IV Additional Principal Family Court had allowed O.P.No. 3212 of 2015 and thereby dissolved the marriage solemnized on 16.02.2004 on the ground of cruelty. The other two petitions, namely, restitution of conjugal rights / O.P.No. 1772 of 2017 and the grant of custody / O.P.No. 986 of 2019 have both been dismissed.

7. It is also to be noted that though O.P.No. 986 of 2019 had been dismissed, subsequently on 24.04.2024, the mother had handed over custody of both the children to the brother of the husband by name D.Gopalakrishnan and as on date, the daughter is in the custody of



D.Gopalakrishnan and also of his mother. The husband is employed in USA.

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8. We would refrain from entering into a discussion on the merits of the case but would extract the relevant portion of the common order on the basis of which, the learned Trial Judge had taken a decision to proceed further to examine the issue on merits in the absence of the participation of the wife in the trial proceedings:-

“Due to this Court has given several chances for cross examination of PW-1 and that this Court has strictly directed to cross examine and even the case has been posted as last chance and no further time has been given for cross examination of PW-1, and due to respondent was absent continuously, hence this Court has treated as no cross on PW-1. After that petitioner has made endorsement as no further witness on his side and it was recorded on 16.09.2022. Subsequently this case has been posted for respondent side evidence. Eventhough the Court has given several chances for adducing evidence on respondent side, but respondent was absent continuously, for respondent side evidence this court has posted the case on 22.09.2022, 30.09.2022, 10.10.2022, 14.10.2022, 26.10.2022, 31.10.2022, 04.11.2022, 09.11.2022 lastly this cases have been posted on



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09.11.2022. Eventhough petitioner was present before Court regularly, but respondent side has no representation for all the hearings. Even though this Court posted as last chance and no further time for adducing evidence on respondent side, but respondent side no representation for several hearings. So on 09.12.2022, this Court recorded and it has been treated as no evidence on the respondent side. So the cases have been posted for arguments on 14.11.2022. On 14.11.2022 petitioner was present, but respondent side was absent and no representation on her side. On that date petitioner side filed common written arguments for all the cases. Subsequently, the respondent side argument has been posted on 15.11.2022. On that date also respondent side no representation. So it is treated as no argument on their side, then Judgment was reserved.”

9. Thereafter, the learned trial Judge had proceeded to deliver Judgment which is now the subject of this appeal. In this connection, we would refer to Order 17 Rule 3 CPC:-

“3. Court may proceed notwithstanding either party fails to produce evidence, etc.



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Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default,-

(a) if the parties are present, proceed to decide the suit forthwith, or

(b) if the parties are, or any of them is, absent, proceed under rule 2.”

10. Since under Order 17 Rule 3(b) it had been stated that the Court should proceed under Rule 2, we would also extract Order 17 Rule 2 CPC:-

“2. Procedure if parties fail to appear on day fixed.-

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

Explanation-

Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the



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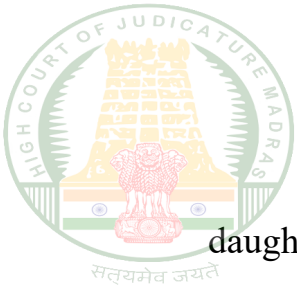


hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.”

11. Since in this provision, it had been provided that the Court should proceed under Order IX CPC, the Court should have proceeded ex parte and could not have proceed on merits. We deem it appropriate that opportunity should be granted to the respondent particularly because the issue relates to the status of marital relationship and about the custody of the child, necessarily, she should be given an opportunity to gaze the witness box and subject herself for cross examination. This is required in view of the allegations raised. The Court can never proceed on merits in matters like this. We would set aside the decrees and Judgments and remand the matters back for fresh consideration.

12. The parties herein to appear before the IV Additional Family Court at Chennai on 20.05.2026 for examination of PW-1 and file her proof affidavit and thereafter, subject herself for cross examination.

13. We are not inclined to disturb the arrangement made between the parties relating to the custody of the daughter. We are informed that the



daughter is now studying in Vellammal Girls School and is in the hostel subject to the rules governing visitation in the hostel by relatives of parents, the Court may pass appropriate orders granting visitation rights to the mother, to see the child. However, we would also place a word. The mother should understand the child is at a very crucial class in her studies and accordingly, both parties should give first priority for the daughter to concentrate on her studies.

14. All these Appeals are allowed and the matters are remanded back to the IV Additional Family Court, at Chennai. Consequently, connected Miscellaneous Petitions are closed. No costs.

(C.V.K.,J.) (K.R.S.,J.)
24-04-2026

Index:Yes / No
Speaking / Non-Speaking order
vsg

To
IV Additional Family Court, Chennai.



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K.RAJASEKAR, J.

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