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CMA No. 3004 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-02-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA No. 3004 of 2025

K.Hemavathy

D/o. Dhachanamoorthy

..Appellant

Vs

V.Karthikeyan

S/o. Veerappan

..Respondent

This Civil Miscellaneous Appeal has been filed under Section 19 of the Family Court Act r/w. Section 28 of Hindu Marriage Act to set aside Common Fair and decreetal Order dated. 17-07-2025 made in OP No. 3890 of 2025 Honble VI Additional Family Court.

For Appellant(s): Mr. N.Gnanalingam

For Respondent(s): Mr. N.Arun Kumar



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ORDER

(Order of the Court was made by N.Sathish Kumar J.)

Challenging the exparte decree passed by the Trial Court granting divorce, the petitioner/wife has preferred the present appeal.

2. The respondent/husband has filed the original petition seeking dissolution of marriage on the ground of cruelty. The marriage between the appellant/wife and the respondent/husband was solemnized on 28.01.2008 as per Hindu Rites and Customs. The respondent/husband sought divorce alleging that the appellant/wife frequently picked quarrels, did not involve herself with his family members, spent lavishly on day to day activities, behaved arrogantly, and treated the respondent/husband with cruelty. On the said grounds, the divorce petition has been filed.

3. The appellant/wife filed a detailed counter denying the allegations. However, an exparte decree of divorce came to be passed on the ground that the appellant/wife failed to cross examine P.W.1. Aggrieved by the same, the present appeal has been filed.



4. The learned counsel for the appellant/wife submitted that the matter was originally posted for filing counter on 24.11.2023 and appellant has filed her counter on 22.04.2024. Subsequently, on 21.04.2025, P.W.1 was partly cross-examined and the matter was adjourned on 19.06.2025 for further cross examination. On that date, since the appellant/wife was absent, she was set exparte and thereafter the impugned order came to be passed.

5. It is the contention of the appellant that she had filed a detailed counter controverting all the allegations and that the exparte decree has been passed merely on the ground that the cross examination of P.W.1 has not been completed by the appellant.

6. Per contra, the learned counsel for the respondent/husband would submit that despite several opportunities given, the appellant failed to cross examine P.W.1.

7. We have considered the matter in the light of the submissions made on both sides and perused the materials available on records carefully.



8. The daily order of the Trial court has also been perused. It is seen that on 21.04.2025, P.W.1 was cross-examined in part and the matter has been adjourned to 19.06.2025 for further cross examination. On that date, as the appellant/wife was absent, she was set exparte and the proof affidavit of P.W.1 was treated as evidence. Thereafter, an exparte decree of divorce came to be passed on 17.07.2025.

9. On perusal of the entire order, we are of the view that the learned Trial Judge has mechanically passed the exparte decree without proper discussion of the pleadings, evidence and documents available on record. Merely because the appellant/wife was set exparte, the Trial Court ought not to have granted a decree of divorce without assessing whether the respondent/husband has established his case in accordance with law.

10. Even while passing an exparte decree, the Court is duty bound to consider the merits of the case and assign proper reasons for granting relief. In the present case, no reason has been assigned by the Trial Court while granting the decree of divorce. The order does not reflect proper consideration of the evidence let in by the respondent/husband. In such view of the matter, we are of the considered view that the exparte decree of divorce cannot be sustained in the eye of law.



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11. Accordingly, this Civil Miscellaneous Petition is allowed.

(i) the exparte decree dated 17.07.2025 passed by the Trial court is set aside and the matter is remanded back to the Trial Court.

(ii) The Trial Court shall afford one more opportunity to the appellant/wife to cross examine P.W.1. Such cross-examination shall be completed within one week from the date fixed by the Trial Court.

(iii) Thereafter, the Trial Court shall afford opportunity to the respondent/husband to let in further evidence, if any, and dispose of the Original Petition on merits and in accordance with law, expeditiously and without granting unnecessary adjournments.

(iv) There shall be no order as to costs.

(N.S.K.,J.) (R.S.V.,J.)

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes

MRP

To

The VI Additional Family Court, Chennai.



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AND

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