

Malarkodi Vs. Muthu

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Court : Chennai

Decided On : Jun-03-2016

Judge : M.V. Muralidaran

Appeal No. : CRP (PD) No. 359 of 2008 & M.P.No. 1 of 2008

Appellant : Malarkodi

Respondent : Muthu

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the fair and decreetal Order dated 14.09.2007 in I.A.No.26 of 2006 in M.O.P.No.53 of 2003, on the file of the Subordinate Court, Hosur.)

1. Heard Mr.P.Mani, learned counsel for the Revision Petitioner and Mr.T.Sundaravadanan, learned counsel for the Respondent.

2. The Respondent/Husband has filed H.M.O.P.No.53 of 2003, before the learned Subordinate Judge, Hosur, for divorce against the petitioner/wife under section 13(1) (i-a) of the Hindu Marriage Act of 1955. On the ground of the petition was set Ex-parte on 30.11.2004 and a decree was passed against the Petitioner/wife on the ground that the Petitioner/wife has not appeared and not filed the counter statement.

3. Therefore, the Petitioner/wife has filed in I.A.No.2 of 2005 under Order 9, Rule 13 and Section 151 of C.P.C with a prayer to set aside the ex-parte decree in H.M.O.P.No.53 of 2003, dated 30.11.2004. In the said petition notice was given to the Respondent. Whereas the Petitioner/Wife has not appeared before the Court on 27.03.2006, hence the petition in I.A.No.2 of 2005 filed by the Petitioner/wife was dismissed for default for non appearance of the Petitioner/wife.

4. Later on, the Petitioner/wife has filed another application in I.A.No.26 of 2006, dated 12.04.2006 with a prayer to restore the petition in I.A.No.2 of 2005 in H.M.O.P.No.53 of 2003 which was dismissed for default on 27.03.2006. The Petitioner states that though the case was posted on 27.03.2006 due to her two daughters examination commencing during the said period she could not appear before the Trial Court. She also states that her Advocate also informed the above hearing date 27.03.2006 through a letter but the said letter was not reached to her address. In the above circumstances, she states that she could not appeared on 27.03.2006 and hence the said petition in I.A.No.2 of 2005 was dismissed for default. Therefore, the Petitioner/wife has prayed the Trial Court to restore the said petition in I.A.No.2 of 2005 which was dismissed for default on 27.03.2006.

5. The counter affidavit was filed by the Respondent in I.A.No.26 of 2006 stating that the Respondent/husband filed the above divorce petition on 03.11.2003 on the ground that she neglected him without any reason and she also states that he is not the husband as well as not cohabit and cooperated with him. Apart from this the Respondent/husband also states that she had a illegal connection with paramour and having bad character. Hence, the Respondent/husband lodged a complaint before the concerned Police Station. Though the Police authorities called the petitioner/wife and made an enquiry but even then, she was not mend her ways.

6. The Respondent/husband also states that the petitioner/wife has filed counter statement after five months in the main divorce petition and after given ample time, this Court has posted for Trial on 30.11.2004. But on that day the Petitioner/wife has not appeared and hence the Trial Court has recorded the evidence of the Respondent/husband and decreed the H.M.O.P.No.53 of 2003 in favour of the

Respondent/husband. After that the Petitioner /wife was filed in I.A.No.2 of 2005, under Order 9, Rule 13 of C.P.C to set aside the ex-partere decree in H.M.O.P.No.53/2003, dated 30.11.2004.

7. Considering both sides arguments, the learned Subordinate Judge, Hosur, dismissed the said application on 14.09.2007 stating that though the petition was filed in I.A.No.26 of 2006 and ample of opportunities was given to the Petitioner/wife, even then, she has not appeared and hence her application in I.A.No.2 of 2005 was dismissed for default on 27.03.2006. The Learned Judge further states that though the Petitioner/wife has given evidence stating that her Advocate sent a letter about hearing of the case dated 27.03.2006 which was not received by the Petitioner/wife. The letter sent by the Advocate of the Petitioner/wife to her and the petitioner is duty bound to appear but she has not appeared and not marked the said letter as of document as evidence. Therefore, it is her duty to enquire her Advocate and note the proceedings and should appear before the Court but without complying with any of the above, the petitioner/wife has chosen simple steps by stating that the letter sent by her Advocate was not received by her and hence, she could not appeared on 27.03.2006. The learned Judge further states that only with an aim to prolong the case, the Petitioner/wife has filed one after another and the reason assigned in the petition in I.A.No.26 of 2006 is not acceptable one and hence in the interest of justice, the learned Judge dismissed the said application in I.A.No.26 of 2006, dated 14.09.2007.

8. This is a case of matrimonial dispute between the wife and husband. Though the Respondent/husband has filed in H.M.O.P.No.53 of 2003 by stating various allegations against the Petitioner/wife, she should be given ample opportunity to put forth the case before the Trial Court. Apart from this the Hon'ble Apex Court and this Hon'ble Court time and again directed the Court belows to consider the main cases of matrimonial in nature by giving ample opportunities to the parties and then pass suitable orders. In this case, the marriage took place on 25.03.1995 and out of the wedlock they got two daughters viz., Monisha and Dharshini. Both daughters are under the custody of the Petitioner/Wife. The Respondent/husband is duty bound to take care of the children but it was alleged by the petitioner/wife that the for the reason stated in the divorce petition. The Respondent/husband

divorce petition against the petitioner/wife should be decided only in the trial by giving ample opportunity to both the Petitioner/wife as well as the Respondent/husband.

9. The Petitioner/wife has also given reason that though the case is pending before the Subordinate Court, Hosur, that she is residing at Dharmapuri and there is no proper transportation she was unable to travel to appear before the Subordinate Court, Dharmapuri and due to the only reason that she has not received the letter sent by her Advocate, which is an acceptable reason. During the course of arguments, the counsel for Respondent/husband stated that the original H.M.O.P.No.53 of 2003 was set aside and the decree passed in favour of the Respondent/husband on 30.11.2004 and the restoration petition filed by the Petitioner/wife in I.A.No.2 of 2005 was dismissed for default on 27.03.2006, after that the Respondent/husband got second marriage and hence the Respondent/husband has prayed this Court to dismiss the above application.

10. Being the wife, in the interest of justice it is just and necessary to give an ample opportunity to the petitioner/wife, it is fit case to restore the application in I.A.No.2 of 2005 and accordingly the I.A.No.26 of 2006 is allowed.

11. Though the original divorce petition was filed in the year of 2003 and by this time thirteen years has gone and hence in the interest of justice this Court directs the trial Court viz., Subordinate Court, Hosur, to dispose the application in I.A.No.2 of 2005 in a speedy manner. Accordingly, the following order has been passed:

(a) This Civil Revision Petition is allowed by setting aside the order in I.A.No.26 of 2006 in I.A.No.2 of 2005 in H.M.O.P.No.53 of 2003, dated 14.09.2007, passed by the learned Subordinate Judge, Hosur.

(b) The Trial Court is directed to dispose of the I.A.No.2 of 2005 within one month from the date of receipt of a copy of this order;

(c) After disposal of the I.A.No.2 of 2005, if the Trial Court is coming to the conclusion that I.A.No.2 of 2005 is allowed, the Trial Court is directed to dispose the H.M.O.P.No.53 of 2003 within three months from the date of order in I.A.No.2

of 2005 to be passed by the Subordinate Court, Hosur and both parties are directed to Co-operate for the early disposal of this case. No costs. Consequently, connected miscellaneous petition is closed.

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