SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

P.Mani Vs. Kalyani

P.Mani Vs. Kalyani

SooperKanoon Citation : sooperkanoon.com/926699

Court : Chennai

Decided On : Feb-10-2012

Judge : R.Banumathi; S.Vimala, Jj.

Acts : Hindu Marriage Act, 1955. - Sections 13(1)(i-a) (i-b); Family Court Act - Section 19

Appeal No. : Civil Miscellaneous Appeal No.3046 of 2005

Appellant : P.Mani

Respondent : Kalyani

Advocate for Pet/Ap. : Mr.P.S.Ganesh, Adv.

Judgement :

Prayer: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act against the decree and judgment dated 24.06.2004 made in F.C.O.P.No.35 of 1997 on the file of Family Court, Salem.

JUDGMENT

R.BANUMATHI,J

1. Being aggrieved by the dismissal of F.C.O.P.No.35 of 1997 on the file of Family Court, Salem (dated 24.06.2004) on the ground of non-appearance of appellant,

the appellant has preferred this appeal.

2. Brief facts are that the marriage between appellant and respondent was solemnised on 8.11.1989 at Kosaripatti in Sankari Taluk and two female children were born to them. The spouses were living in Armed Reserve Quarters at Annathanapatti village, Salem. In the year 1994, differences arose between spouses and inspite of the advice by the police, the appellant and respondent could not reconcile their differences. The appellant filed F.C.O.P.No.35 of 1997 seeking divorce on the grounds of cruelty and desertion under Sections 13(1)(i-a) (i-b) of Hindu Marriage Act, 1955. Since the appellant did not conduct the case, F.C.O.P.No.35 of 1997 was earlier dismissed for default on 17.10.2000. As per the order in C.R.P.(NPD).No.1473 of 2002, dated 25.03.2004, the Family Court was directed to restore F.C.O.P.No.35 of 1997 to file and dispose the same within three months according to law on merits. On compliance of the conditional order, and on filing of memo by the appellant, F.C.O.P.No.35 of 2007 was restored on 21.06.2004. Even on that date, the petitioner's side was closed and respondent was examined as R.W.1 and the matter was posted for argument on 23.06.2004 and the petition came to be dismissed on 24.06.2004 on the ground that the appellant has not adduced any evidence and has not substantiated his contention.

3. Challenging the impugned order, learned counsel for appellant contended that the Family Court posted the case on 21.06.2004 only for the purpose of ascertaining the payment of cost made by the appellant as per direction of the High Court in C.R.P.(NPD) No.1473 of 2002 and the Family Court ought not to have insisted the appellant to give evidence without giving any opportunity to the appellant and hurriedly passed the final order on 24.06.2004, which is quite contrary to the principles of natural justice. Taking us through the typed set of papers, the learned counsel for appellant would further contend that the trial Court having taken up the matter on 21.06.2004 for the first time should have given sufficient opportunity to adduce evidence and the order of the trial Court is unsustainable.

4. The respondent was served, but she has not entered appearance and her name was printed in the cause list. In C.R.P.(NPD) No.1473 of 2002, the High Court

passed the order on 25.03.2004 allowing the revision on payment of cost of Rs.1,000/- and issuing direction to the Family Court to dispose of the matter within three months. The appellant has paid the cost by way of Demand Draft on 30.03.2004 drawn on State Bank of India, Sankari Branch. The appellant has filed a petition before the Family Court on 17.06.2004 which was taken on file in I.A.No.267 of 2004. By perusal of typed set of papers, it is seen that in the said petition, notice was ordered and posted on 21.06.2004. On 21.06.2004, the respondent entered appearance and stated about the receiving of cost. On the basis of the endorsement, F.C.O.P was taken up for enquiry on the same day i.e., on 21.06.2004 and the following order came to be passed: Respondent Present. In view of endorsement made by respondent this Petition is allowed. F.C.O.P. is taken up for enquiry in view of the direction given by Hon'ble High Court to dispose the same on or before 24-6-2004.

5. The learned trial Judge proceeded to take up the matter on the same day i.e., 21.06.2004 and is said to have insisted the appellant to adduce evidence on 21.06.2004 on the same day of restoration of F.C.O.P. Evidently, the appellant would not have come prepared for evidence on 21.06.2004. But the learned trial Judge proceeded to observe that ..... on 21.06.2004, as usual, the petitioner (appellant) was not ready to proceed with the enquiry in F.C.O.P. and hence the appellant (petitioner) side was closed..... On the same day - 21.06.2004, the respondent was examined as R.W.1 and her evidence was closed and the matter was posted on 23.6.2004 observing that the appellant was absent on 21.06.2004. The learned trial Judge appears to have proceeded further and the impugned order came to be passed on 24.06.2004.

6. As pointed out earlier, on filing of petition by the appellant on 17.06.2004, notice was ordered and the F.C.O.P. was posted on 21.06.2004 only to ascertain about the compliance of the conditional order on 21.06.2004. Per contra, it appears that the appellant was asked to let in evidence. Obviously, the appellant could not have come prepared on 21.06.2004 to let in evidence.

7. It was submitted before us that immediately on pronouncement of the order in C.R.P.(NPD) No.1473 of 2002 on 25.03.2004, the appellant sought for certified

copy of order on 26.03.2004. The appellant has obtained the certified copy of the order only on 7.4.2004 and thereafter the appellant filed the memo before the Family Court Hence, the appellant cannot be faulted for not adducing evidence and the trial judge was not right in castigating him as an irresponsible litigant. After restoration of F.C.O.P, the trial Judge ought to have afforded sufficient opportunity. Even if the stipulated time in C.R.P.(NPD) No.1473 of 2002 expired, the trial Court could have very well written to the High Court seeking extension of time for disposal of the matter. We are conscious that the FCOP is of the year 1997. However, since the appellant was not given sufficient opportunity to adduce evidence, the impugned order cannot be sustained and the matter has to be remitted back to the Family Court.

8. In the result, the impugned order dated 24.06.2004 in F.C.O.P.No.35 of 1997 on the file of Family Court, Salem is set aside and the matter is remitted back to the Family Court, Salem for proceeding in accordance with law. The Family Court, Salem shall send notice to the respondent informing her about the restoration of F.C.O.P., and afford sufficient opportunity to both parties and proceed with the matter and dispose of the same in accordance with law. However, there is no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com