

**BEFORE THE PRINCIPAL DISTRICT COURT
VELLORE DISTRICT**

Present:- Dr.P.Murugan, Ph.D. (Law)
(J.O.Code - TN1793)
Principal District Judge

Tuesday, the 10th day of December, 2024

I.A.No. 02 of 2024
in
H.M.G.W.O.P. No. 167 of 2021

K.Karthik . . . Petitioner/Petitioner

-vs-

P.Kavitha . . . Respondent/Respondent

This petition was coming before me on 05.12.2024 for hearing in the presence of Thiru K.Krishnan, counsel for the petitioner and, of Thiru G.Balamurugan, counsel for the respondent and, upon hearing the enquiry of both sides and, upon perusing the relevant records, this court passes the following:-

O R D E R

Petition is filed under section Order 9 Rule 9 and sec.151 of C.P.C. to set aside the dismissal order dated 22.08.2024 passed against the petitioner and to restore the case on file.

2. Brief facts from the petition averments is as that the above case was posted on 22.08.2024 for enquiry and he was ready to appear before this court but missed the train. Since, he has to come from Coimbatore for which when the matter was called his presence was not there and the case was dismissed for default. On that date, he appeared before this court at 03.00 p.m. and thereafter his counsel advised him to file a set aside application. Since he is residing at Coimbatore his counsel prepared affidavit and sent to him for signature and it was not received by him. Thereafter, he contacted his counsel and filed this application to set aside the dismissal order. His non appearance on the hearing date is neither willful nor wanton. Hence, this petition.

3. Brief counter of the respondent is as that the reason assigned by the petitioner is not a genuine one. Already, this respondent filed a divorce case in H.M.O.P.No.354 of 2018 before the Sub Court, Pondicherry against the petitioner. Even in that case, he did not appear. Therefore, an ex parte decree was passed on 24.09.2018. Thereafter, the petitioner herein filed a petition to set aside the ex parte decree after three years in the divorce case. In the mean time, the respondent got an employment at Vellore and she approached the Hon'ble High Court of

Madras to transfer the H.M.O.P.No.354 of 2018 from Pondy cherry to Vellore Family Court and the same was allowed. This guardian petition is filed only to harass the respondent and her child. The respondent filed maintenance case in M.C.No.52 of 2022 on the file of Family Court, Vellore for maintenance to the child. The petitioner already filed a similar petition for the custody of the minor which is pending before the Family Court, Vellore. Since, the Hon'ble High Court of Madras granted stay in C.R.P.No.4724 of 2023, the Family Court proceedings is still on hold. Then the petition filed in Tr.O.P.No.298 of 2022 before the Principal District Court, Vellore to transfer the H.M.G.W.O.P.No.167 of 2021 to the Family Court, Vellore and the same was dismissed for default on 25.04.2024. In the maintenance case the petitioner herein availed several adjournments without giving his evidence. The reason stated in the petition that the petitioner missed the train, but there is no documentary evidence. Even the petitioner is a bank employee if he really took leave on 22.08.2024 there would be a document to show. So the petitioner filed this petition only to harass the respondent and her child. Therefore, this petition is liable to be dismissed.

4. Heard the both sides. Perused the material records. Considered the submission raised by both sides.

5. The point for consideration is as to whether the dismissal order dated 22.08.2024 passed against the petitioner is to be set aside or not?

6. The petitioner filed H.M.G.W.O.P.No.167 of 2021 to appoint him as a guardian to the minor Lokajanani and direct the respondent to hand over the minor to him. Though that petition was pending for a quite long time the petitioner filed an interim application in I.A.No.1 of 2023 for interim custody of the child to him. It was allowed by an order 04.07.2024. This main G.W.O.P was pending for enquiry since 03.11.2022. Even without proceedings the enquiry in the main case the petitioner filed the above referred I.A only in 2023 even it was allowed but the petitioner could not proceed with the main case, and therefore, the main petition was dismissed for default on 22.08.2024.

7. The reason assigned by the petitioner to restore the main O.P. is as that since he was ready to proceed the case on 22.08.2024 when he reached the court at 03.00 p.m it was already dismissed of default and the same was informed by his counsel. It is stated by the petitioner that

he missed the train to reach the court. Therefore, there is a delay on his part. In the given circumstances the application has been filed.

8. The brief counter of the respondent is as that the respondent already filed a divorce case at Family Court, Pondicherry and exparte decree was passed. Thereafter, after three years only the petitioner herein filed a petition to setaside the exparte decree. In the mean time the respondent got an employment at Vellore. Therefore, that divorce case was transferred to Vellore Family Court after approaching the Hon'ble High Court of Madras for transfer. In the meantime, the respondent filed the maintenance case in M.C.No.52 of 2022 before the Family Court, Vellore for claiming maintenance to her child only which is also pending for the respondent side evidence. These are the delay in tactics adopted by the petitioner. The petitioner is a bank employee, if it is so without availing leave he could not come to the court on 22.08.2024. His absence on the fatefull day of 22.08.2024, no train ticket nor leave sanctioned order is filed to show that he actually availed leave to come to Vellore. Without any documentary evidence, the contention of the respondent is as that without availing leave to come to Vellore the reason assigned by the petitioner can not be looked into.

9. Taking note of the case facts and circumstances though the petitioner could not proceed with the main case and it was dismissed for default and this application has been filed within limitation period of 30 days the factum that the petitioner worked in the bank is not in dispute and other proceedings of divorce, maintenance case are pending between the parties are also not in dispute. To give fairness to both the parties where the respondent is also working at Vellore and the petitioner has to come from Coimbatore to proceed the case, this court is of the firm view that the main case in H.M.G.W.O.P.No.167 of 2021 is to be restored subject to cost of Rs.2,000/- to the respondent and the cost is to be paid within 18.12.2024 and produce a proof on 19.12.2024. After complying the said condition, on that day the petitioner should place his evidence to proceed further. In the event of any failure to comply the condition this petition would stand dismissed. This point is answered conditionally.

10. To allow this application :--

(i) The petitioner is directed to pay cost of Rs.2,000/- to the respondent on or before 18.12.2024 and produce a proof on 19.12.2024;

(ii) The petitioner shall place evidence on 19.12.2024 once the conditional cost is paid and proof is filed. Failing which further orders will be passed; and

(iii) Call on.19.12.2024.

Dictated to the Steno-typist, transcribed and computerized by her, corrected and pronounced by me in the Open Court, on this day the 10th day of December, 2024.

Principal District Judge
Vellore District

Annexures :- NIL

P D J
Vlr