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(2010) 05 KL CK 0076

High Court Of Kerala

Case No: Matrimonial Appeal No. 114 of 2010

Anjaneyan U. @ Ani — APPELLANT

Vs

Anju Thomas — RESPONDENT

Date of Decision: May 21, 2010

Citation: (2010) 05 KL CK 0076

Hon'ble Judges: R. Basant, J; M.C. Hari Rani, J

Bench: Division Bench

Advocate: P.K. Radhika, for the Appellant; Bechu Kurian Thomas, for the Respondent

Final Decision: Allowed

Judgement

R. Basant, J.
The respondent/wife had filed an application for divorce as O.P. No. 250/08. It was allowed and that order was passed ex parte. Long later, the appellant herein filed an application to set aside the ex parte order along with an application to condone the delay. Those applications were allowed subject to conditions. Conditions were not complied with by the date on which the appellant was expected to comply with the the order. The petitions were consequently dismissed. According to the appellant, there was an order of stay in a transfer petition and it was hence that the amount was not paid within the stipulated time. On the very next day payment was offered and the same was not accepted. The court below has dismissed both the applications for non-payment of the amount.

2. An application was filed to restore those petitions. The court below, by the impugned order, has dismissed the same. Aggrieved by that order, the appellant has come up before this Court.

3. The learned Counsel for the appellant submits that the omission/failure to comply with the order was not wilful and was because of pendency of the transfer petition. The learned Counsel for the appellant asserts that there was an order of stay in the transfer petition, but that submission is contested.

4. Be that as it may, we are satisfied that in the the totality of facts and circumstances, a lenient view can be taken and the appellant can be granted a fresh opportunity to comply with the conditions and to get the ex parte order set aside. The ex parte order we set aside is one dissolving the marriage. Appropriate further conditions can be imposed to ensure that the appellant is not deliberately attempting to protract the proceedings.

5. In the result:

(a) this appeal is allowed, subject to conditions.

(b) If the appellant pays to the respondent or deposits before the court below an amount of Rs. 7,500/- (Rupees Seven Thousand Five Hundred only) as costs on or before 14.6.2010, the impugned order and the ex parte order passed in O.P. No. 250/08 shall stand set aside and the court below shall proceed to dispose of O.P. No. 250/08 on merits as expeditiously as possible, at any rate within a period of six months from 15.6.2010 on which date both parties shall appear before the court below to continue the proceedings.

(c) If the amount is not paid or deposited by 14.6.2010, the court below shall record that fact on 15.6.2010 and thereupon the impugned order shall stand revived.

(d) Compliance shall be reported to this Court.