

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/12/2008

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THE HON'BLE MR. JUSTICE S.RAJESWARAN

Tr. C.M.P. No.210 of 2007

ORDER

For Being Mentioned

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On 06.08.2008, recording the submission made by the learned counsel for the respondent that O.P.No.617 of 2006 filed by the respondent/husband, which is sought to be transferred by the petitioner/wife in the above transfer petition has been decided exparte and an exparte decree was passed on 30.5.2007, this Court dismissed the transfer petitioner as there was no representation on behalf of the petitioner in the last two hearings.

2. The above transfer petition has been posted before me for "Being Mentioned" at the instance of the learned counsel for the petitioner/wife.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent/husband. I have also gone through the affidavit filed in support of the petition to set aside the exparte order dated 6.8.2008 in the above transfer petition.

4. The learned counsel for the petitioner/wife submits that she was not able to attend the court on 6.8.2008 and also previous two occasions, because of the inadvertant mistake made at the office of her counsel. Hence, the learned counsel prayed to set aside the order passed by this court on 06.08.2008 dismissing the transfer petition. It was further submitted that no exparte order was passed in O.P.No.617 of 2008 on 30.5.2007 as wrongly represented by the learned counsel for the respondent and the same is still pending before the Family Court, Coimbatore.

5. Per contra, the learned counsel for the respondent submits that since there was no representation on behalf of the petitioner on three occasions, this Court was pleased to pass an exparte order dismissing the transfer petition and the same need not be restored. But, he could not deny the fact that O.P.No.617 of 2008 is still pending on the file of the Family Court.

6. Considering the submission made by the learned counsel for the petitioner/wife, I am inclined to set aside the order passed by this court on 06.08.2008 with cost.

7. Accordingly, the learned counsel for the petitioner/wife is hereby directed to pay a sum of Rs.500/- towards cost to the learned counsel for the respondent/husband within one week from today. This amount has been paid immediately in the open court by the learned counsel for the petitioner/wife to the learned counsel for the respondent/husband.

8. In view of the fact that the cost has been paid, M.P.No.2 of 2008 filed by the petitioner to restore the Tr.C.M.P.No.210 of 2007, is allowed and accordingly, the Tr.C.M.P.No.210 of 2007 is restored on the file of this court and the order dated 6.8.2008 is set aside.

9. It is further represented by the learned counsel for the petitioner that on 20.6.2007, this court allowed the petition filed by the petitioner/wife for dispensing with the personal appearance of the petitioner/wife before the Family court, Coimbatore in O.P.No.617 of 2006 till the disposal of the above Transfer petition and he prayed to extend the same till the disposal of the above transfer petition.

10. Accordingly, the order of dispensing with the personal appearance of the petitioner/wife in O.P.No.617 of 2006, passed by this court on 20.6.2007 shall continue till the disposal of the above transfer petition.

11. The Registry is directed to post the Tr.C.M.P.No.210 of 2007 before the regular court after Christmas holidays.

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