

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.811 of 2023

and

C.M.P.(MD)No.3715 of 2023

Syed Ali Fathima

... Petitioner / Petitioner / Defendant

-Vs-

S.Beer Mohammed

... Respondent / Respondent / Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the order dated 19.10.2022 made in I.A.No.5 of 2022 in O.S.No.410 of 2016 on the file of the Additional District Munsif Court, Tenkasi.

For Petitioner : Mr.S.C.Herold Singh

ORDER

The petitioner is the defendant in O.S.No.410 of 2016. She is the wife of the respondent. The respondent has filed the above suit before the Additional

District Munsif Court, Tenkasi to declare the marriage solemnized between the petitioner and the respondent on 03.02.2008 as having dissolved on account of the pronouncement of thrice talaq by the respondent on 01.10.2016.

2.The case of the petitioner is that only the muslim women has a right to approach the Court under the provisions of the Dissolution of Muslim Marriage Act, 1939 in terms of the grounds stated in Section 2 of the said Act.

3.It is submitted that if according to the respondent, the respondent has already pronounced talaq on 01.10.2016, there is no cause of action and therefore, the plaint in O.S.No.410 of 2016 is liable to be rejected in terms of Order VII Rule 11 (d) C.P.C.

4.I have considered the arguments advanced by the learned counsel for the petitioner and perused the impugned order passed by the trial Court, rejecting the application filed in I.A.No.5 of 2022 by the petitioner under Order VII Rule 11(d) C.P.C.

5.The petitioner has a right to invoke the jurisdiction of the Court under Order VII Rule 11(d) C.P.C., only if the plaint does reveal that there is a cause of action for the relief that is sought for by the respondent / plaintiff. The relevant portion of the cause of action in the plaint reads as under:-

“6.வழக்குமூலம்:

உபயவாதிகளுக்கும் நிக்கா என்னும் திருமணம் நடைபெற்ற 03.02.2008 (மூன்று.இரண்டு.இரண்டாயிரத்து எட்டு) முதலும் அதன் பின்னர் பிரதிவாதி யாதொரு காரண காரியமுமின்றி அவரது பெற்றோர் வீட்டிற்கு சென்று வாதியை புறக்கணித்து வரும் காலங்கள் முதலும் வாதி பிரதிவாதியை தன்னுடன் சேர்ந்து வாழ அழைத்த போதும் பிரதிவாதி வாதியை யாதொரு காரண காரியமில்லாமல் பிரிந்து வாழ்ந்து வந்த நிலையில் வாதி பிரதிவாதிக்கு இஸ்லாமிய ஷரியத் சட்டப்படி முத்தலாக் அறிவிப்பு அனுப்பிய கடந்த 01.10.2016 (ஒன்று.பத்து.இரண்டாயிரத்தி பதினாறு) காலம் முதலும் அதன் பின்னிட்டும் பிரதிவாதி வாதிக்கு பொய்யான சங்கதிகளை கூறி பதிலறிவிப்பு கடந்த 07.10.2016 (ஏழு.பத்து.இரண்டாயிரத்தி பதினாறு) காலங்கள் முதலும் வாதியின் வசிப்பிடமுமான சமூகம் கோர்ட் அதிகார வரம்பிற்குட்பட்ட தென்காசியில் வைத்து வழக்கு மூலம் உற்பத்தி.□

6.Whether there is a sufficient case made out for grant of the relief that is sought for by the respondent in O.S.No.410 of 2016 on the strength of the

above cause of action can be decided by the said Court only after trial or hearing the parties. A suit cannot be scuttled by the petitioner by filing an application under Order VII Rule 11(d) CPC.

7.I am of the view that the impugned fair and decreetal order, dismissing the application filed by the petitioner cannot be interfered with. In these circumstances, this Civil Revision Petition is liable to be dismissed, accordingly, it is dismissed.

8.Considering the fact that the suit is of the year 2016 and the issues have already been framed, the trial Court is directed to expedite the proceedings in the said suit and pass judgment and decree as expeditiously as possible, preferably, within a period of nine (9) months from the date of receipt of a copy of this order. All the issues relating to maintainability of the suit are left open to be canvassed by the parties at the time of final arguments and decided by the trial Court. No costs. Consequently, the connected miscellaneous petition is closed.

24.03.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No

MYR

To:

1.The Additional District Munsif Court,
Tenkasi.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P.(MD)No.811 of 2023

C.SARAVANAN, J.

MYR

Order made in
C.R.P.(MD)No.811 of 2023
and
CMP(MD)No.3715 of 2023

Dated:

24.03.2023