

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2015

CORAM

THE HONOURABLE MR. JUSTICE **D.HARIPARANTHAMAN**

C.R.P.(PD)No.3349 of 2015 and  
M.P.No.1 of 2015

Santhanayagi @ Tamilselvi

... Petitioner

vs.

C.Balaji

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India seeking direction to the trial court to allow the parties to exhaust the Alternative Dispute Resolution Method before rendering final decision in H.M.O.P.No.113 of 2013 on the file of the Sub Court, Myladuthurai.

For Petitioner : Mr.P.Sesubalan Raja

**ORDER**

The petitioner is the wife and the respondent is the husband. The respondent/husband filed H.M.O.P.No.113 of 2013 for divorce on the file of the Sub-Court, Myladuthurai.

2. The record discloses that the respondent/husband, who is the petitioner in H.M.O.P.No.113 of 2013 deposed before the Trial Court and his evidence was over. The matter was adjourned for the evidence of the revision petitioner, who is the respondent in H.M.O.P.113 of 2013.

3. While so, it is stated that a memo was filed on 02.06.2015 in un-numbered I.A. in H.M.O.P.No.113 of 2013 by the revision petitioner seeking to refer the matter for mediation. The memo filed by the petitioner is extracted hereunder:-

"It is submitted that since the petitioner/respondent wants to negotiate this matrimonial case with her husband, she prays one more and final opportunity for its settlement. Hence it is prayed that this Hon'ble court may be pleased to refer this case for mediation and thus render justice."

4. Pursuant to the aforesaid memo, the matter was referred to Lok Adalat and directed to be listed on 13.06.2015. However, the matter was not settled in the Lok Adalat, since the husband was not present. Hence, the matter was sent back to the Court for further proceeding.

5. The learned counsel for the petitioner has filed this revision petition seeking for a direction to the Sub-Court, Myladuthurai to refer the matter to mediation.

6. Heard the learned counsel for the petitioner.

7. The learned counsel for the petitioner has submitted that it is mandatory for the Trial Court to refer the matter to mediation at any stage of

the proceeding, that is, according to the learned counsel for the petitioner, though the trial has commenced and evidence of the petitioner was closed and posted for the evidence of the respondent, still, the respondent can seek to refer the matter to mediation and he also relied on Order 32-A Rule 3 of CPC in that regard.

8. The learned counsel for the petitioner relied on the following two judgments in support of his contention:-

i) CDJ 2010 SC 637 [Afcons Infrastructure Ltd., and another v. Cherian Varkey Construction Co. (P) Ltd. & others

ii) CDJ 2011 APHC 902 [ In re v. Matrimonial Matters]

9. I have considered the submissions made by the learned counsel for the petitioner and also perused the judgments.

10. It is useful to refer to Order 32-A Rule 3 of CPC:-

**"3. Duty of Court to make efforts for settlement.-**

(1) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility

of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

3. The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings."

11. In my view, particularly, in matrimonial disputes, it is mandatory on the party of the trial court to adopt Alternative Dispute Resolution Method, before commencement of trial, by referring the matter to mediation or Lok Adalat to settle it amicably. In the case on hand, the trial has commenced. The husband, who filed HMOP for divorce, gave evidence and his evidence was over. At this stage, the wife has filed the memo to refer the matter to mediation, even without the consent of the husband.

12. Even after the commencement of the trial, if both parties have approached the Court to refer the matter for Lok Adalat or Mediation, then the Court is bound to do the same based on Order 32-A Rule 3(2) CPC. But the Court cannot be blamed, if one of the parties alone make an application to refer the matter for mediation when the other party is not interested.

13. In the present case, the memo filed by the petitioner/wife on 02.06.2015 was acted upon and the trial court on 04.06.2015 referred the matter to Lok Adalat on 13.06.2015 without the consent of the husband. But the petitioner/husband did not even turn up. In these circumstances, the

Court cannot compel a party to appear for mediation, when he/she is not interested in settlement.

14. In my view, in the judgments referred to by the learned counsel for the petitioner, the Court has not held that it is bound to refer the matter to mediation repeatedly even at the instance of one party and even after the commencement of the trial, when the other party is not interested.

15. For all the foregoing reasons, the Civil Revision Petition fails and accordingly, the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2015

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**D.HARIPARANTHAMAN,J.,**

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To

The Sub Court, Myladuthurai.

**C.R.P.(PD)No.3349 of 2015**

**28.08.2015**