

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.10.2015**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.658/2015

S.Kamalakannan : Petitioner
versus

Sangeetha : Respondent

PRAYER: Revision filed against the order dated 8.12.2014, made in I.A.No.106 of 2014 in HMOP No.89 of 2012, on the file of the Subordinate Judge, Virudhachalam.

For petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.P.Raja

For respondent : Mr.M.K.Kabir, Senior Counsel,
for Mr.T.Jayaraman

ORDER

The application filed by the petitioner for amendment of the original petition for the purpose of including a prayer for divorce on the ground of cruelty in the original petition filed for the grant of a decree of nullity of marriage was dismissed by the Trial Judge both on merits as well as on the ground of delay. Feeling aggrieved, the unsuccessful petitioner in I.A.No.106 of 2014 in HMOP No.89 of 2012 is before this Court.

2. Heard the learned Senior Counsel for the petitioner and the learned Senior Counsel for the respondent.

3. The petitioner initially filed original petition in H.M.O.P.No.66 of

2011, before the Sub Court, Chidambaram, against the respondent, praying for a decree of nullity of marriage. The original petition was later transferred to the file of Subordinate Judge, Virudachalam and renumbered as H.M.O.P.No.89 of 2012.

4. The petitioner, in the original petition, contended that the respondent is not a normal person and her strange behaviour indicated mental illness. The petitioner therefore wanted the Trial Court to grant a decree of nullity of marriage solemnized on 5 June 2011. The original petition was opposed by the respondent by filing counter. The respondent specifically denied the allegation regarding her mental condition and the alleged abnormal behaviour.

5. The respondent thereafter filed original petition in H.M.O.P.No.12 of 2012 on the file of Subordinate Court, Virudachalam, invoking Section 9 of the Hindu Marriage Act. The Original petition was opposed by the petitioner by filing counter statement.

6. The Trial Court recorded the evidence on the side of the parties and thereafter, posted the matter for arguments. It was only at that point of time, the revision petitioner filed application in I.A.No.106 of 2014, praying for amendment, to incorporate an additional prayer for a decree of dissolution of marriage on the ground of cruelty.

7. It is the case of the petitioner that only on account of the subsequent events, he filed the application in I.A.No.106 of 2014. In short, the alleged acts of cruelty on the part of the respondent during the currency of the divorce petition made the petitioner to file the application seeking divorce on the ground of cruelty.

8. The application was filed during the fag end of the proceeding in H.M.O.P.No.89 of 2012. In case the petitioner was serious, he should have filed the application at least before commencement of trial. The petitioner waited till recording the evidence and it was only during the stage of arguments, the application was filed. The petitioner failed to show due diligence. It is not as if amendment is automatic, in case the prayer is to convert the original petition under Section 12, Hindu Marriage Act into one of Divorce under Section 13 of the said Act.

9. The learned Trial Judge considered the matter in detail and arrived at a clear finding against the petitioner. It is not for this Court to consider the matter once again and to substitute its opinion. I am therefore of the view that there is absolutely no merit in the contention raised by the petitioner.

K.K.SASIDHARAN, J.
(tar)

10. In the upshot, I dismiss the civil revision petition. No costs.
Consequently, M.P.No.1/2012 is also dismissed.

27.10.2015

Index:Yes/no
tar

To
The Subordinate Judge, Virudhachalam.

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