



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P (MD) No.2757 of 2015 (PD)

P.Mariselvi .. Petitioner/Petitioner

Vs.

A.Muthukumar .. Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 05.12.2015 passed in the un-numbered I.A.No. Of 2015 in an Un-numbered H.M.O.P.No. Of 2015 on the file of the Learned Family Judge, Tirunelveli.

For Petitioners : Mrs.M.Anbarasi

ORDER

Invoking the provisions of Article 227 of the Constitution of India, this Memorandum of Civil Revision Petition is directed against the order of rejection of un-numbered application filed by the Revision Petitioner under Section 14(1) of Hindu Marriage Act, 1955 seeking leave to file the divorce petition within the period of one year.

2. Heard Mrs. M.Anbarasi, learned counsel appearing for the petitioner and perused the averments of the grounds of the Civil Revision Petition as well as the impugned order of rejection.

3.It appears that this petitioner being wife of the respondent, has filed an un-numbered petition under Section 13(i-a) of the Hindu Marriage Act, 1955 as against the respondent seeking the relief of divorce by dissolving their marriage solemnized on 17.09.2015 at Ambasamudram on the ground of cruelty. In fact, at the time of filing this petition, the statutory period of one year was not expired. Therefore, the petitioner has filed an un-numbered application under Section 14(1) of Hindu Marriage Act, 1955 seeking leave to file the divorce petition as an exceptional case within the period of one year.

4.Mrs.M.Anbarasi, learned counsel appearing for the petitioner has also submitted that the expiration of one year has not been completed in this case. But, as the petitioner was subjected to cruelty in sexual cohabitation by the respondent, she was not able to tolerate and to continue the matrimonial relationship with the respondent. On account of this reason, seeking leave of this Court to file a petition within one year, this application is filed. However, this application was not even numbered and was rejected by the Court below, in limine.

5.Now, Mrs.M.Anbarasi, learned counsel appearing for the petitioner has submitted that the learned Family Judge, Tirunelveli might be directed to number the application and dispose the same on merit after inviting objection from the other side.



6.No doubt, Section 14(1) of the Hindu Marriage Act, 1955 envisages that:

"1.Notwithstanding anything contained in this Act, it shall not be competent for any Court to entertain any petition for dissolution of a marriage by a decree of divorce, [unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage:

Provided that the Court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented [before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but, if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the Court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the [expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the [expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the [expiration of one year] from the date of the marriage, the Court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the [said one year]."

Insofar as this petition is concerned, this Court finds some reason which is to be recorded in favour of the revision petitioner and therefore, to meet the ends of justice it may be expedient to direct the learned Family Court Judge, Tirunelveli to take the un-numbered application on his file and number the same and dispose it within a prescribed time after inviting objection from the respondent on merits.

7. Accordingly, the Civil Revision Petition is disposed of at the admission stage itself and the impugned order dated 05.12.2015 is set aside and the un-numbered application, which is filed under Section 14(1) of the Hindu Marriage Act, 1955, is remitted back to the Family Court, Tirunelveli with a direction to take the application on the file of the Family Court, Tirunelveli and number and dispose of the same on merits after inviting objection from the other side. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(AS)

/True copy/



To

The Judge,
The Family Court,
Tirunelveli.

+1cc to Mr.D.Selvanayagam, Advocate SR.No.76212

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