

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.1011 of 2016

P.Epsi

.. Petitioner

Vs

J.Eugeen Durai Mahesh Kumar

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order of Principal Family Court in O.P.SR.No.12578 of 2015, dated 23.02.2016 and direct the Principal Family Court to take on the O.P. on the file of the Principal Family Court and proceed as per law.

For Petitioner

:Mr.G.Elanchezhiyan

ORDER

The petitioners as husband and wife filed the petition under Section 10(A) of the Indian Divorce Act 1869 seeking a decree of divorce on mutual consent alleging that a) they are Christians b) their marriage was solemnized on 29.08.2014 at Trichy as per Christian rites, c) they are living separately, though under the same roof from 05.11.2014 d) they are not able to sink their differences and the matrimonial life having broken down irretrievably, Court must grant them a decree for divorce.

2. The petition was returned on the ground of a lack of territorial jurisdiction and lack of jurisdiction on the relief claimed. The return was specifically on the ground that a) the statutory period of separation of two years not completed b) proof of joint living within the jurisdiction of the Court not filed and c) as both the parties have given the same address, proof of separation (as required) is not filed.

3. The first contention of the learned counsel for the revision petitioner is that in order to maintain the petition for divorce by mutual consent, period of one year separation is sufficient, as per the dictum laid down, as against the statutory requirement of two years. In order to support this preposition, (While representing the petition), the petitioner has relied upon the decision reported in II (2010) DMC 526 (DB) Kerala High Court in which it has been held that :

(a) The stipulation in Sec.10A(1) of the Divorce Act that the spouses must "have been living separately for a period of two years or more" is declared to be unconstitutional as the stipulation of the period of "two years" therein violates the fundamental rights to equality and the right to life under Arts.14 and 21 of the Constitution.

(b) To save the provision and to avoid the vice of unconstitutionality the period of "two years" stipulated in Sec.10A of the Divorce Act is read down to a period of "one year".

Thus it is clear that, the return regarding period of separation has been complied by the petitioner.

4. So far as the requirement regarding proof of residence is concerned, the insurance policy dated 04.11.2015, standing in the name of respondent herein has been produced. Anybody can reasonably presume that after the marriage the wife will be living with the husband and even in case of employed woman, posted elsewhere, as a wife, she might have visited her husband atleast during week- ends.

5. There is no prohibition of separate living under the same roof and therefore once the proof for living in Chennai within the jurisdiction of the Sub Court is produced, the Court ought not to have insisted upon further proof for joint living.

6. The Court also expects proof for separate living. There may be cases where the couples who are living together can make averments that they are separately living. Anticipating this, the Court expects proof. It is a matter for enquiry and it is not a matter

for rejection at the threshold. It is an application jointly presented seeking divorce by mutual consent. Having regard to the relief asked for, the Court is expected to be pragmatic in their approach while taking the case on file. Therefore, the orders of the Court repeatedly returning the petition are unjustified.

7. Hence, in the result, the order passed in O.P.SR.No.12578 of 2015 is set aside and this Civil Revision petition is allowed. The Court is directed to take the case on file and to decide the issue in accordance with law. . No costs.

30.03.2016

ds

Note : Registry is directed to return the original impugned order to the learned counsel for the petitioner.

To:
The Principal Family Court
Chennai.

S.VIMALA,J.

ds

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