

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.10.2016**

CORAM:

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

C.R.P.(P.D.) No.1176 of 2016

L.Srinivasan

...Petitioner

versus

M.Sangeetha

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.01.2016 passed in F.C.O.P.No.3854 of 2015 on the file of III Additional Family Court, Chennai.

For Petitioner : Mr. P.Rathanavel

For respondent : Mr. V.Thirumalai

ORDER

The petitioner filed an Original Petition before the III Additional Principal Judge, Family Court, Chennai in F.C.O.P.No.3854 of 2015, praying for a decree under section 9 of the Hindu Marriage Act. The respondent entered appearance. The petitioner himself filed a memo seeking withdrawal of the Original Petition for the purpose of filing a fresh petition for divorce. The memo was opposed by the respondent. The learned III Additional Principal Judge dismissed the same by order dated 4.1.2016. The said order is under challenge in this Civil Revision Petition.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

3. The petitioner filed a memo before the trial court on the date of appearance of the respondent. The petitioner wanted to withdraw the proceedings in H.M.O.P.No.3854 of 2015, which was filed for restitution of conjugal rights. The respondent opposed the prayer for withdrawal only on the ground that she has already filed an application for interim maintenance in I.A.No.2159 of 2015 and till the application is decided, the petitioner should not be permitted to withdraw the H.M.O.P No.3854 of 2015. The learned trial Judge considered the memo and rejected it with a reasoning that the right accrued to the respondent should not be defeated and as such there is no question of withdrawal of the Original Petition.

4. The learned III Additional Principal Judge, Family Court, Chennai was not correct in accepting the memo from the petitioner and passing orders, rejecting the request for withdrawal. The petitioner ought to have filed an application under Order 23 Rule 1 of Civil Procedure Code for withdrawal of the proceedings. No such application was filed before the trial court. The learned trial Judge ought to have

rejected the memo solely on the ground that no order could be passed for withdrawal of the Original Petition, on a memo. I am not in a position to agree with the procedure adopted by the learned trial Judge. I am therefore of the view that the impugned order is liable to be set aside.

5. Therefore, the order dated 4.1.2016 passed by the III Additional Principal Judge, Family Court, Chennai is set aside. The petitioner is given liberty to file an application before the trial court under Order 23 Rule 1 of Civil Procedure Code for withdrawal of H.M.O.P.No.3854 of 2015. The learned Judge is directed to consider the said application with notice to the respondent and pass an order on merits as per law.

6. The Civil Revision Petition is disposed of with the above observation. No costs.

25.10.2016

Index:Yes/No

ajr

To

III Additional Family Court, Chennai.

K.K.SASIDHARAN, J.

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