

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.2443 of 2016

R.Venkatasubramanian
S/o.V.K.Ramadurai

... Petitioner

VS

Ramya Ganesan
W/o.R.Venkatasubramanian

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India seeking a direction to learned Subordinate Judge, Poonamallee, to take the case in I.A.S.R.No.5814 of 2016 in H.M.O.P.No.320 of 2016 on file.

For Petitioner : Mr.R.Muniyapparaj

ORDER

This revision seeks a direction to learned Subordinate Judge, Poonamallee, to take the case in I.A.S.R.No.5814 of 2016 in H.M.O.P.No.320 of 2016 on file.

2. Heard learned counsel for petitioner.

3. Learned counsel submits that petitioner/husband filed H.M.O.P.No.314 of 2012 on the file of learned Subordinate Judge, Poonamallee, seeking divorce. Both petitioner/husband and respondent/wife have been living separately over a period of four years and hence, they have entered into a Memorandum of Understanding and filed H.M.O.P.No.320 of 2016 seeking divorce by mutual consent. They have also filed I.A.S.R.No.5814 of 2016 in H.M.O.P.No.320 of 2016 to waive the minimum waiting period of six months after presentation of petition for divorce by mutual consent. Learned counsel submits that as per Section 13B(1) of the Hindu Marriage Act, 1955, a petition for divorce by mutual consent could be filed after completion of one year of marriage. In the instant case, both petitioner and respondent have not

been living together for the past four years and hence, they have filed I.A.S.R.No.5814 of 2016 in H.M.O.P.No.320 of 2016 seeking grant of waiver, which was returned by the Court below. Hence, this revision has been filed seeking a direction to learned Subordinate Judge, Poonamallee, to take the case in I.A.S.R.No.5814 of 2016 in H.M.O.P.No.320 of 2016 on file.

4. In support of his submission, learned counsel relied on the decision of this Court in ***R.Jegannathan and another [2014 (6) CTC 74]***, wherein it has been observed thus:

“9. ... Hence, the object of the cooling period of six months is to retrieve the difference of opinion between the parties. But here, there is no chance for reunion. Because already both the parties are waiting for a long period and only in the Mediation, the matter was settled. In such circumstances, I am of the view, to render complete justice to the parties, six months' cooling period mentioned under Section 13-B(2) of the Hindu Marriage Act is not a bar to grant mutual consent immediately.

10. Further more, on considering the Agreement entered by the parties before the Mediation and on that basis only, Divorce Petition on mutual consent has been filed, this Court is of the opinion that six months' colling period under Section 13-B(2) of the Hindu Marriage Act is hereby dispensed with and the

Principal Family Court, Chennai, is directed to record the evidence of both the parties and dispose of the Petition filed under Section 13-B of the Hindu Marriage Act in accordance with law.”

5. In the case cited, the decision to part ways has come about during mediation in a pending action. One cannot apply a straight jacket formula as the sets of facts in two different cases hardly ever can be alike. In the instant case, the present action for divorce by mutual consent has been preceded by a petition for dissolution of marriage moved by the petitioner in H.M.O.P.No.314 of 2012. The parties have now lived apart for four years. The rationale of the judgment in *R.Jegannathan and another [2014 (6) CTC 74]* applies.

Accordingly, the Civil Revision Petition is allowed. Learned Subordinate Judge, Poonamallee, is directed to take the case in I.A.S.R.No.5814 of 2016 in H.M.O.P.No.320 of 2016 on file, record evidence of both parties and dispose of the petition in H.M.O.P.No.320 of 2016, in accordance with law. No costs.

10.08.2016

Note to office:

Issue order copy by 18.08.2016

Index:yes/no

Internet:yes

gm

To

The Subordinate Judge,
Poonamallee.

C.T.SELVAM, J

gm

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