

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.10.2016**

CORAM:

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

C.R.P.(P.D.) No.2689 of 2016 and
CMP.No.13950 of 2016

C.N.Sathis Babu

...Petitioner

versus

R.Uthara

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A.No.1004 of 2015 in HMOP No.1197 of 2014 on the file of the Principal Family Judge at Coimbatore dated 12.05.2016.

For Petitioner : Mr.V.Ayyadurai
for Mr.P.Muthukumaarasamy

For Respondent : Mr.M.Guruprasad

ORDER

The respondent instituted a proceedings in HMOP No.1197 of 2014 before the Principal Family Court at Coimbatore, invoking Section 12 of the Hindu Marriage Act. The respondent wanted the marriage performed on 09.06.2014 to be declared as null and void. The petitioner filed an application before the Trial Court to reject the original petition

invoking Order VII Rule 11 of the Code of Civil Procedure. The application was dismissed by the Trial Court. The said order is under challenge in this Civil Revision Petition.

2. The learned counsel for the petitioner contended that the original petition as framed and filed by the respondent under Section 12 of the Hindu Marriage Act is not maintainable. According to the learned counsel, the ingredients of Section 12 of the Act are not made out in the Original Petition. The learned counsel contended that at the most, the petition could be treated as one under Section 13 of the Act and as such, the Trial Court was not correct in dismissing the application filed by the petitioner to reject the plaint.

3. The learned counsel for the respondent justified the impugned order. According to the respondent, the petitioner played a fraud and obtained the consent of the respondent and solemnized the marriage. The respondent was therefore justified in initiating the proceedings under Section 12 of the Act.

4. The marriage of the petitioner with the respondent was solemnized on 09.06.2014. The respondent alleging that her consent was obtained fraudulently and by suppression of material facts filed a petition under Section 12 of the Hindu Marriage Act.

5. Section 12(i)(c) of the Hindu Marriage Act indicates that in case the consent of the petitioner before the Trial Court was obtained by fraud, as to the nature of the ceremony or as to any material fact or circumstance, petition under Section 12 of the Act is maintainable.

6. The respondent in her petition in H.M.O.P.No.1197 of 2014 contended that the petitioner had illicit affair with another person. He was an alcoholic and was maintaining an illicit relationship with one Malathy. It is the contention of the respondent that in case those details were made known earlier, she would not have consented to the marriage.

7. The question as to whether the materials provided by the respondent would amount to a fraud within the meaning of Section 12(i)(c) of the Act, is essentially an issue to be decided by the Trial Court after taking evidence.

8. While considering an application under Order VII Rule 11 of CPC, the Court is primarily concerned with the averments in the original petition. In case, there are triable issues and adjudication is necessary, there is no question of axing the original petition at the threshold.

9. The learned Trial Judge made it very clear that the question as to whether the petitioner and his parents had committed fraud would be decided during trial. The learned Judge has given sufficient reasons to justify the order, dismissing the application under Order VII Rule 11 of CPC. I do not find any error or illegality in the said order warranting interference by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

10. In the up shot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2016

Index:Yes/No
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To

The Principal Family Court, Coimbatore

K.K.SASIDHARAN, J.

(svki)

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