

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.2916/2016

Rejitha : Petitioner
versus

Vikram V.Rajkumar : Respondent

PRAYER: Revision filed against the order in I.A.No.1882 of 2016 in O.P.No.4236 of 2013 dated 23.8.2016 on the file of the II Additional Family Court, Chennai.

For petitioner : Mr.Senthilnathan

For respondent : Mr.R.Esakkiraj

ORDER

The respondent filed an application before the II Additional Family Court, Chennai in I.A.No.1882 of 2016 to permit him to file additional counter affidavit in I.A.No.2157 of 2015. The Trial Court allowed the said application. Feeling aggrieved, the unsuccessful respondent in I.A.No.1882 of 2016 is before this Court.

2. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

3. The respondent filed an original petition in O.P.No.4236 of 2013 under Section 13(1) (ia) of the Hindu Marriage Act. The respondent on appearance before the Trial Court filed an interlocutory application in I.A.No.2157 of 2015, claiming interim maintenance. The application was opposed by the respondent by filing counter affidavit. Thereafter, the respondent filed an application in I.A.No.1882 of 2016 with a prayer to receive additional counter affidavit. The Trial Court allowed the application with an observation that the party should be given liberty to produce new materials which are not available to them when the pleading was filed earlier. The order passed by the learned trial Judge allowing the application in I.A.No.1882 of 2016 is challenged by the petitioner primarily on the ground that adultery was not a contention taken in the original petition in O.P.No.4236 of 2013.

4. The petitioner filed an interlocutory application in I.A.No.2157 of 2015 for interim maintenance. The respondent resisted the application by filing counter. Later, additional written statement was filed contending that the petitioner is leading an adulterous life and he is not obliged to pay maintenance.

5. The fact that adulterous life was not taken as a ground earlier cannot be a reason to reject the additional pleading, as it was filed only in the interlocutory application filed by the petitioner. Merely because the

respondent has not taken a stand in his original petition that the petitioner has been leading an adulterous life, that would not deny him an opportunity to oppose the application filed for maintenance, by contending that being a woman leading an adulterous life, she is not entitled to maintenance. This aspect was considered by the learned trial Judge and the application was rightly allowed. I do not find any error or illegality in the order warranting interference by this Court by exercising the revisional jurisdiction.

6. The petitioner is given liberty to file a reply statement taking into account the contention taken in the additional counter affidavit. The learned trial Judge is directed to consider the application in I.A.No. 1882 of 2016 and pass appropriate orders on merits and in accordance with law.

7. The civil revision petition is disposed of with the above direction. No costs. Consequently, C.M.P.No.15626 of 2016 is closed.

17.10.2016

Index:Yes/no
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To
The II Additional Family Court, Chennai

K.K.SASIDHARAN, J.

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