

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.892 of 2012
and
M.P.No.1 of 2012**

M.Rajeswari

.. Petitioner

Vs.

P.Mahalingam

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in unfiled I.A.No.... of 2012, in I.A.No.103 of 2004 in H.M.O.P.No.19 of 2004, dated 08.02.2012, on the file of the Court of Principal Subordinate Judge, Villupuram.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mr.D.Kumaralingam

ORDER

The case of the revision petitioners is that the respondent herein filed the petition for divorce as against the revision petitioner in H.M.O.P.No 19 of 2004 on the file of the Principal Subordinate Court

on the ground of cruelty and desertion. The revision petitioner entered appearance and contested for dismissal of the above H.M.O.P filed by the respondent, further in the said H.M.O.P the revision petitioner filed an application U/s 25 of Hindu Marriages Act in I.A No.103 of 2004 praying for permanent alimony at the rate of Rs.5,000/- per month towards herself, Rs.2,000/- towards house rent Rs.10,000/- towards litigation expenses of revision petitioner and her daughters and another Rs.10,000/- annually towards the educational expenses of minor daughters. While so, the said petition for divorce filed by the respondent came to be allowed by the Learned Principal judge on erroneous appreciation of facts. Aggrieved over the same the revision petitioner filed Civil Miscellaneous Appeal before the learned District and Sessions Judge Villupuram. However without assigning any reason the said Civil Miscellaneous Appeal filed by the revision petitioner was dismissed by the learned District and Sessions Judge, Villupuram on the day of admission itself on 10.09.2008. Hence aggrieved over the said order the revision petitioner preferred the Civil Revision Petition before this Court in C.R.P.Nos.2105 and 2198 of 2010. This Court vide order dated 12.09.2013 allowed the Civil Revision Petition by setting aside the orders made by the court below and the matter was remitted back to the file of the Principal Subordinate Court by restoring the

above said I.A.No.103 of 2012 in H.M.O.P.No 19 of 2004. Further this Court directed the trial Court to dispose of the said I.A.No.103 of 2012 within a period of three months from the date of receipt of that order.

2. Therefore the said I.A.103 of 2012 was taken on file by the Principal Sub Judge, whereupon the petitioner filed unnumbered I.A No.___of 2012 in I.A.No.103 of 2012 in H.M.O.P.No.19 of 2004 under Order VI, Rule 17 to amend the prayer by enhancing the face value of the earlier alimony sought by the revision petitioner. The amendment sought by the revision petitioner was praying Rs.15000/- per month towards her instead of Rs.5000/- and Rs.30,000/- towards medical, litigation purposes and another Rs.20,000/- annually towards the educational expenses of minor daughters. However, the Learned Trial Judge without numbering the revision petitioner's application filed Under Order VI, Rule 17, has returned the unnumbered petition by passing a Docket order.

3. The sole reason stated by the learned trial Judge is that the application cannot be taken on file, since it was made beyond the three months time stipulated by this court to dispose the I.A.No.103 of 2012. The returned petition was again represented by the counsel for

the revision petitioners mentioning that the cost of living after about 9 years than prevailed at the time of filing the I.A and hence the Amendment is maintainable. The trial Court however dismissed the said I.A. holding that the 3 months time stipulated by this Court has already expired, the application is made belatedly when the matter was posted for arguments and since no specific direction by this Court to the trial Court to hear and decide application for enhancement, if made by the revision petitioner herein. The said application was dismissed by the trial Court on 08.02.2012. The said order is impugned herein.

4.I heard Mr.A.Muthukumar, learned counsel appearing for the petitioner and Mr.D.Kumaralingam, learned counsel appearing for the respondent and perused the records.

5.The learned counsel for the revision petitioners contended that the trial court erred in dismissing the application filed under Order VI, Rule 17, despite knowledge that the cost of living would not be the same after 9 years from the date of filing the petition. The revision petitioner is not in a position to maintain her daughters. The petitioner is living at the mercy of his brothers, since her parents are no more.

The respondent is affluent being a retired head master from a government school and also possesses immovable properties worth several crore, besides he also derives income from agricultural sources and rents from building. However, wantonly the respondent failed to maintain even his daughters.

6. The learned counsel for the revision petitioners contended that Order VI, Rule 17 of C.P.C., contemplates that amendment is permissible at any stage of the Trial. The cause and intention of Order VI, Rule 17 is to enable the parties in the interest of justice to amend their relief, even at a later stage. Further the cost of living, educational, medical, rental and litigation expenses has now risen several times higher than prevailed at the time of filing the application. Therefore the quantum of the maintenance is to be necessarily enhanced and an amendment to that effect is just and necessary.

7. Per contra, the learned counsel for the respondents submitted that the Trial court having rightly found that the application is filed beyond the stipulated period, has rightly dismissed the same. Further the application is being filed belatedly.

8. On taking into account the proposed amendment sought by the revision petitioner it is found that the amendment prayed does not amount to withdrawal or institution of a new case. Further it is obvious that the amendment sought is mere enhancement of face value of the Alimony amount prayed at the time of filing the application about 9 years ago. It is noteworthy that the cost of living and other expenses have also risen to many a time, as that of pre-existed. For easy understanding, a family would be run very decently with an amount of Rs.5000/- in 1990's, whereas now it would definitely not suffice to run a family to meet out their needs and expenses.

9. Secondly the question arises now is whether an amendment can be allowed on the basis of events occurred subsequent to the suit. The Law is well settled that though the rights and liabilities of the parties should be decided on the date of suit, the court in the interest of justice may take into notice the subsequent events and grant appropriate reliefs. In the case on hand neither a new case nor any amendment affecting the nature of the litigation is being sought by the revision petitioner.

10. In so far as the contention that the amendment is sought

beyond the time stipulated by this court, for disposal of the Application, that application is being filed belatedly after closing of evidence, this court like to emphasis that in deserving cases definitely Procedural justice is required that the events and developments subsequent to the institution of proceedings must be taken into consideration to promote Substantial justice.

11.In the result:

(a) this civil revision petition is allowed by setting aside the order in I.A.No. of 2012 in I.A.No. 103 of 2004 in H.M.O.P.No. 19 of 2004, dated 08.02.2012, on the file of the Principal Sub judge, Villupuram;

(b) the learned Principal Sub Judge, Villupuram, is hereby directed to number the said unnumbered I.A., and to pass orders by giving notice to both the parties within a period of one month;

(c) after passing the order in the amendment petition, the learned Principal Sub-Judge, Villupuram, is hereby directed to dispose of the I.A.No.103 of 2004, by granting fair opportunity to both sides and dispose of the same, within a period of two months from the date of receipt of a

copy of this order. No cost. Consequently, connected
miscellaneous petition is closed.

25.11.2016

Note: Issue order copy on 26.04.2017
Internet: Yes
Index: Yes

vs

To

The Principal Subordinate Judge,
Villupuram.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(PD)No.892 of 2012
and
M.P.No.1 of 2012**

25.11.2016

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