



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CRP (MD) No.1394 of 2016

WEB COPY

Dr.G.Anton Prem Thilak

... Petitioner

vs.

S.Benedicta Seeli

... Respondent

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 13.05.2016 in unnumbered IDOP No. of 2016 on the file of the Family Court, Tirunelveli and to direct the lower Court to number the IDOP and to take it on file.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.F.X.Eugene

O R D E R

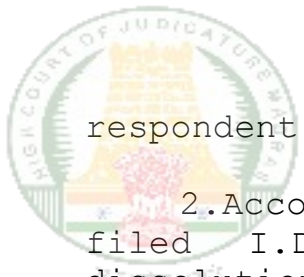
The Civil Revision Petition arises against the order passed in the un-numbered I.D.O.P.No. of 2016 by rejecting the same by pointing out the following discrepancies:

"Petition was verified. Case records were examined. Petitioner appeared. Questioned. The Act under which the case has been filed is wrongly mentioned by the petitioner. That mistake till now not corrected in the copies also. There is no proof for the Chennai address of the wife. There is no proof for the address mentioned in the annexed postal cover. The details mentioned at paragraph 5 regarding his visit of his wife at Chennai on 02.03.2014 is not clear. It is wrong. In the same paragraph it is stated that "But it did not end in completion of the sexual act as the respondent was experiencing", which is stated without reason, object and it is not clear and understandable. The cause of action is wrongly mentioned and the same has not been corrected in the copies. Mentioning the address of the petitioner as Valliyoor, Radhapuram is wrong. As already stated the Chennai address has no proof. Like that, in the petition there are lot of discrepancies, including cause of action has been informed. When the Husband in the petition was



questioned regarding the passage in page No.4 paragraph No.7 that "That was the last time, the respondent consented for a physical relationship", he replied that it is wrong, what he tried to say was different, ie., he wanted to say that till that moment at least he tried for physical relationship with his wife and she has cooperated? but due to pain they could not complete it, after that moment there was no chance also for trying and she did not permit him to come near her and he accepted that that was wrongly mentioned. The petitioner said that as per law, he know what is "penetration", but when questioned whether he said about penetration in the petition, he replied, it was not. Saying that he stated as 'consummation' and he wants to correct the petition. In the circumstances, if the petitioner is permitted to correct the petition, there is legal danger that the details which husband said against her wife may completely change. Not only that, further he said that he has filed a medical record named 'discharge summary' and the original is with his wife. He did not see the original. He know what is 'true copy'. Without seeing the original it cannot be attested as 'true copy'. When it was put to him that in the discharge charge summary it is stated as 'true copy' and questioned that whether it could be stated as true copy without seeking the original, he replied that he did not know. When the marriage registration certificate of petitioner was shown to him and questioned that the marriage registration certificate itself is a true copy and for that a true copy is given, he replied as yes. When it is informed that he cannot put like that and it is against law, he said that actually he gave the documents to his advocate and he did not know about filing. He did not know about attesting the same as true copy. He accepted that he signed the document only after studying it. He know the document. But he did not know about attesting true copy for true copy. He only wrote the details in page 4 paragraph 7. He accepted that he came to know the wrong mentioning of what he wants to tell, when the Court draw his attention and there is no doubt about it. He also accepted many wrongs in the petition, which cannot be rectified. Without seeing the original document attesting a document as true copy is not legally correct. It is against it. Like that there are many things in the petition which is not in accordance with law. In the circumstances, without valid documents, request for correcting the petition is totally against its contents and law. Hence taking it on file is against law. Hence, <https://hcservices.courtsofmadras.org/hcservices> rest of justice this petition is rejected."

Against the said order, the petitioner has filed the present petition before this Court. Notice has been ordered to the



respondent.

2. According to learned counsel for the petitioner, petitioner filed I.D.O.P. before the Family Court, Tirunelveli for dissolution of marriage. The Family Court, Tirunelveli has rejected the said petition pointing out the aforesaid defects by order dated 13.05.2015. The rejection order passed by the Family Court is without jurisdiction. The trial Court has only to return the papers and opportunity shall be given to the petitioner to rectify the defects pointed out in the I.D.O.P. Now, at the unnumbered stage, the trial Court has passed the order based on the admissions made by the petitioner and therefore, the rejection order is liable to be set aside.

3. Learned counsel for the petitioner requested that an opportunity may be given to the petitioner to agitate the matter on merits under the provisions of law as the rejection of the O.P. at the threshold stage is void and un-sustainable in law.

4. Learned counsel for the respondent submitted that the petition filed by the petitioner was rejected under Order 7 Rule 11 C.P.C.. Therefore, the Civil Revision Petition is not maintainable before this Court. The revision petitioner has not availed the alternative remedy by filing an appeal to the appellate Court. Under Order 7 Rule 13 C.P.C., the petitioner can file fresh O.P. before the Family Court for the relief as prayed for in the I.D.O.P. Therefore, when there is remedy available for the petitioner to file either appeal or fresh petition, he cannot file the revision before this Court.

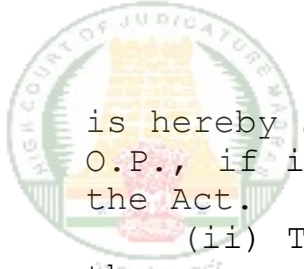
5. I have considered the rival submissions and perused the materials available on record.

6. It is an admitted fact that I.D.O.P. has been filed by the petitioner before the Family Court, Tirunelveli. The said I.D.O.P. was rejected at the unnumbered stage by pointing out the aforesaid defects. The grievance of the petitioner is that the Family Court has rejected the O.P. without numbering it. Considering the facts and circumstances of the case and also the rival submissions, this Court is of the view that the Court below ought to have given an opportunity for rectifying the defects. Hence, this Court is inclined to set aside the impugned order to give an opportunity to the petitioner. Learned counsel for the petitioner submitted that liberty has to be granted to the respondent to raise all the contentions before the trial Court after the aforesaid I.D.O.P. is numbered.

7. In view of the above, this Court is inclined to pass the

<https://hccs.court.gov.in/cases/>

(i) The rejection order dated 13.05.2015 passed in unnumbered I.D.O.P. No. of 2016 on the file of the Family Court, Tirunelveli



is hereby set aside and the Family Court is directed to number the O.P., if it satisfies with the requirements as contemplated under the Act.

(ii) The Registry is directed to return the original papers to the counsel for the petitioner within two weeks from the date of receipt of a copy of the order. On receipt of the original I.D.O.P., the petitioner is hereby directed to comply with the other defects except the rejection of cause of action and the same shall be represented within fourth weeks therefrom. Thereafter, the Family Court is directed to number the O.P. subject to the objections of the respondent. In the event of O.P. being numbered, opportunity shall be given to the respondent to raise all issues including maintainability.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub Assistant Registrar

sj

To

The Judge,
Family Court,
Tiruenelveli.

COPY TO:

THE SECTION OFFICER,
V.R.& E.R. SECTIONS,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1cc to Mr.G.Prabhu Rajadurai Advocate Sr.No. 59331

+1cc to Mr.F.X.Eugene, Advocate Sr.No. 59193

JAM/09.11.16/SS 2/ 4P-5C

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