



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2016

WEB COPY

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.565 of 2016 (PD)

S.Sumathi

.. Petitioner

Vs.

V.Maheshwaran

.. Respondent

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 04.01.2016, passed by the Family Court, Tirunelveli, in an un-numbered petition, and thereby directing the Trial Court to take the H.M.O.P on file and to get on with the trial in the same.

For Petitioner : Mr.F.X.Eugene

ORDER

This Civil Revision Petition is filed, to set aside the order dated 04.01.2016, passed by the learned Judge, Family Court, Tirunelveli, in an un-numbered petition, and also direction to the trial court to take the H.M.O.P on file.

2. The petitioner/wife filed H.M.O.P for divorce against the respondent/husband. Along with the HMOP petition, she filed an interlocutory application, for dispensing with a period of one year from the date of marriage, for filing petition for divorce. The said petition was filed under Section 14(2) of the Hindu Marriage Act, 1955, and Section 151 of C.P.C. The learned Judge rejected the application stating that when there is a specific provision for divorce, petition under Section 151 of C.P.C. is not maintainable. The learned Judge rejected the application on merits, without even numbering the application, filed by the petitioner and without giving opportunity to the petitioner. Against the said rejection the petitioner has come up with this present Civil Revision Petition.

3. The learned counsel for the petitioner submitted that quoting wrong provision is not a ground for rejection of application without numbering and giving opportunity to the petitioner and decide the matter on merits.



4. Heard the learned counsel appearing for the petitioner and perused the materials available on record. Considering the nature of the issue, notice to the respondent is not necessary.

WEB COPY

5. Considering the facts and circumstances of the case, the order of the learned Judge is liable to be set aside. In fine, this court set aside the order of the court below and the petitioner is directed to represent the application along with the petition. On such representation, the learned Judge, Family Court, Tirunelveli, is directed to number the application, even otherwise in order and decide the matter on merits, in accordance with law, after giving opportunity to both parties.

6. With the above direction, this Civil Revision Petition is allowed. No Costs.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

The Judge,
Family Court, Tirunelveli.

Pjl
AA/SKS-RR/28.03.2016/2p-2c

C.R.P (MD) No.565 of 2016 (PD)
11.03.2016