

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.1454 of 2017
and
C.M.P.No.6757 of 2017

R.Premalatha

.. Petitioners

Vs.

V.Nandhagopal

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order dated 27.12.2016 passed in I.A.No.556 of 2016 in H.M.O.P.No.31 of 2011 on the file of the learned Additional Principal Family Judge, Coimbatore.

For Petitioner : Mr.N.Ishtiaq Ahmed

For Respondent : Mr.B.Dayaalan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 27.12.2016 passed in I.A.No.556 of 2016 in H.M.O.P.No.31 of 2011 on the file of the learned Additional Principal Family Judge, Coimbatore.

2. The petitioner is the wife and the respondent is the husband. The respondent filed H.M.O.P. No.31 of 2011 on the file of the Family Court, Coimbatore, seeking decree of divorce on the ground of adultery with costs of the petition. The petitioner filed counter statement and denied all the contentions and is contesting the said H.M.O.P. Parties have let in evidence and H.M.O.P. is posted for arguments. At that stage, the respondent filed I.A.No.556 of 2016 seeking amendment in the H.M.O.P. petition, by including provision of law which reads as under:

" 1) After the short cause title of the main petition, in the provision of law, after the Section 13 (1) (i) add as, 'and 13(1) (i-a).

2) After the short cause title of the docket of the main petition, in the provision of law, after the Section 13(1) (i) add as, 'and 13(1) (i-a)'.

3) In the VIII paragraph of the main petition, after the words, '... the acts of the adultery with the co-respondent' add as 'and the cruelty heaped on the petitioner by the respondent'. "

3. According to the respondent, the provision of law and the word of cruelty by mistakenly not mentioned in the H.M.O.P. petition.

4. The petitioner filed counter affidavit and opposed the said application. According to the petitioner, the respondent is introducing a new case of cruelty and creating new cause of action. When the learned counsel for the petitioner cross examined the respondent with regard to cruelty, the learned counsel for petitioner objected the same, as cruelty was not pleaded by the respondent.

5. Learned Judge, considering the averments made in the affidavit, counter affidavit and especially, the averments made in the main H.M.O.P. and the nature of the amendment sought for by the respondent, allowed the application holding that the respondent has not introducing new case or new cause of action.

6. Aggrieved over by the order of the trial Court, dated. 27.12.2016 made in I.A.No.556 of 2016 in H.M.O.P.No.31 of 2011 on the file of the learned Additional Principal Family Judge, Coimbatore, the present Civil Revision Petition is filed by the wife.

7. Learned counsel for the petitioner would submit that by amendment, the respondent is introducing a new case of cruelty and new cause of action. The learned Judge has mechanically allowed the application. The learned Judge failed to see after conclusion of evidence and when the HMOP is posted for arguments, the petitioner has come out with the present application for amendment. The said application is belated one. Learned Judge, ought to have dismissed the application.

8. Learned counsel for the respondent/caveator submitted that the respondent has made all the averments with regard to cruelty in the H.M.O.P.. But by mistake, the respondent has not mentioned in the portion of the cause of action and provision of law in the H.M.O.P. The respondent is not introducing a new case of cruelty or new cause of action by this amendment.

9. Heard the learned counsel for parties and perused the materials available on record.

10. A reading of the averments made in H.M.O.P.No.31 of 2011 filed by the respondent would reveal that the respondent has made averments about mental cruelty caused by the petitioner in Paragraph - 7 of the petition. The respondent failed to mention in paragraph - 8 of the main petition and he has also failed to mention the provision of law by including 'Section 13 (1)(i-a)' instead of 'Section 13(1)(i)' and in the cause of action portion, 'and the cruelty heaped on the petitioner by the respondent'. By amendment by including provision of law and the word cruelty in cause of action, the respondent not introducing any new case or new cause of action.

11. The learned Judge, considering the submissions on either side and the averments made in the petition, allowed the application by giving cogent and valid reasons. There is no illegality or irregularity in the said order warranting interference by this Court.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

The Additional Principal Family Judge,
Additional Family Court,
Coimbatore.

+1CC TO Mr.B.Dayallan, Advocate sr.23789
+1cc to Mr.N.Ishtiaq Ahmed, Advocate sr.24146

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and
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lrs(co)
ss(21/6/2017)