

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.188 of 2017

and

C.M.P.No.782 of 2017

Dr.S.Karthikhavarshini @ Kalpana

.. Petitioner

Vs.

Dr.K.R.Premlal

.. Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order, dated 16.11.2016 passed in I.A.No.480 of 2016 in H.M.O.P.No.403 of 2014 on the file of the Sub-Court, Poonamallee.

For petitioner : Mr.V.Bhavani Subbaroyan

ORDER

The revision petition is filed by the wife challenging the order refusing to amend the H.M.O.P. filed by her under Section 12(1)(a) of the Hindu Marriage Act. The main petition is filed for declaration that the marriage of the petitioner with the respondent-wife, is null and void. It is the case of the

revision petitioner-wife that the O.P. was filed only under Section 12(1)(a) of the Hindu Marriage Act, whereas she omitted to mention about Section 12(1)(c) of the said Act. Therefore, the amendment is sought for to include the provision of law, namely Section 12(1)(c) of the said Act in the H.M.O.P. The said application was dismissed, against which the Civil Revision Petition is now filed.

2. It is the contention of the learned counsel for the petitioner that certain facts with respect to the health of the respondent-husband after an accident, was suppressed by them, and therefore, she could not include the provisions of Section 12(1)(c) at the time of filing of the O.P. It is stated by the respondent-husband that such inclusion of Section 12(1)(c) beyond the period of one year, is impermissible, and therefore, the amendment should not be allowed.

3. Admittedly, the marriage has taken place between the petitioner and the respondent on 12.09.2014. Anyone seeking to annul the marriage under Section 12 of the said Act, ought to have filed the petition under Section 12(1)(c) within one year from the date of marriage. Though the O.P. is filed on 15.10.2014, within the period of limitation, the amendment application is filed only in the year 2016. Any amendment that may be allowed, would date back to the date of the filing of the O.P. However, such amendment if it is otherwise barred by law, cannot be allowed. Now, the main relief in the O.P. is sought for under special enactment, namely the

Hindu Marriage Act. For filing a petition under Section 12, the statute provides for only one year from the date of the marriage. The revision petitioner-wife has already filed the O.P. within time. It is her case that only later, she found out about the fraud played by the respondent-husband, and therefore, she wanted to include the relief under Section 12(1)(c) also. But the averments made in the H.M.O.P. shows that the accident was made known to the petitioner-wife even on 15.09.2014 itself. It is for the revision petitioner-wife to have verified the facts and sought the relief under the provisions of law within the period of one year.

4. Learned counsel for the petitioner placed reliance on the decision of the Supreme Court reported in 1979 (4) SCC 365 (Concord of India Insurance Co. Ltd. Vs. Nirmala Devi), wherein it is held that if it is bona-fide mistake of the legal advisor, the delay can be condoned. But the said decision is under Section 5 of the Limitation Act, where the Courts are empowered with the discretionary power, whereas, here, the statute specifically prohibits even entertaining any application beyond the period of one year. Hence, the said decision of the Supreme Court is not applicable to the facts of the present case.

5. Having filed an amendment application beyond the period of limitation, it was rightly rejected by the trial Court, which does not warrant any interference. Hence, the Civil Revision Petition is dismissed. Since the main O.P. itself is for annulling the marriage between the petitioner and the

respondent, the learned Sub-Judge, Poonamallee is directed to dispose of H.M.O.P.No.403 of 2014 before 30.06.2017. No costs. The Miscellaneous Petition is closed.

25.01.2017

Index: Yes/no

Internet: Yes/no

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The Sub-Judge, Poonamallee.

PUSHPA SATHYANARAYANA,J

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