

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.06.2017

Coram:

The Honourable Ms.**Justice V.M.VELUMANI**

C.R.P.(PD)No.528 of 2017
and C.M.P.Nos.2654 & 8647 of 2017

S.Karpagapriya

... Petitioner

Vs.

R.Sakthivel

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final of the learned Principal Judge, Family Court, Chennai, dated 23.01.2017 made in I.A.No.2688 of 2016 in H.M.O.P.No.863 of 2015.

For Petitioner : Mr.Kandhandurai

For Respondent : M/s.Sudha Ramalingam

ORDER

This Civil Revision Petition has been filed against the fair and final of the learned Principal Judge, Family Court, Chennai, dated 23.01.2017 made in I.A.No.2688 of 2016 in H.M.O.P.No.863 of 2015.

2. The petitioner is wife and respondent is the husband. The respondent filed the H.M.O.P.No.863 of 2015 for dissolution of marriage on the grounds of cruelty and desertion, against the petitioner. The petitioner filed counter statement and denied the various allegations made by the respondent. The petitioner has also stated that the respondent has no love and affection for their minor child.

3. The respondent filed I.A.No.2688 of 2016 for amendment of the original petition to include the averments stated in the application, to include the prayer for permanent custody for his minor son.

4. The petitioner filed counter affidavit opposing the said application and submitted that the application has been filed only to fill up lacuna pointed out by the petitioner in the counter statement

filed in the H.M.O.P.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application on the ground that the amendment sought for is pre trial amendment and the petitioner has stated that if the amendment is allowed, she has right to challenge the veracity of the averments made by the respondent and the petitioner will get an opportunity to file additional counter and no prejudice will be caused to the petitioner.

6. Against the order dated 23.01.2017 made in I.A.No.2688 of 2016, the present Civil Revision Petition is filed by the petitioner/wife.

7. Heard both sides and perused the materials available on record.

8. From the materials on record, it is seen that the respondent has originally filed the H.M.O.P. for divorce on the ground of cruelty and desertion. In the said H.M.O.P., the respondent has not sought for custody of his minor son. There is noting on record to state that the respondent filed an application and sought for visitation right or

temporary custody of his minor son. Only when the petitioner stated in the counter statement filed in the H.M.O.P. that the respondent has no love and affection for the minor son, the respondent filed the application for amendment to include number of paragraphs and to include additional prayer for permanent custody of his minor son in the H.M.O.P. The respondent is seeking amendment to include the prayer of permanent custody of minor son only due to the fact that the petitioner stated that respondent do not have any love and affection for their minor son.

9. The learned Judge without properly appreciating the averments made in the affidavit filed in support of the application, allowed the present application. The learned Judge failed to see that the respondent has not given any reason for not including all the averments now stated in the affidavit and additional prayer made in the original petition in H.M.O.P.No.863 of 2015. The reason for seeking amendment is only due to the allegation made by the petitioner in the counter statement. This will not be the ground for allowing the application, unless the respondent makes out the case for amendment, the same cannot be allowed. Whether the amendment sought for is before commencement of trial or after the

commencement of trial, the respondent must substantiate the need for amendment. The respondent is introducing new cause of action and new case by way of amendment by seeking to introduce the relief of permanent custody of minor son. The reason given by the learned Judge that the petitioner will have an opportunity to file additional written statement challenging the averments made by the respondent is devoid of merits. The learned Judge committed irregularity in not appreciating the facts of the case. The order dated 23.01.2017 made in I.A.No.2688 of 2016 on the file of the learned Principal Judge, Family Court, Chennai, is liable to be set aside.

10. In the result, the Civil Revision Petition is allowed by setting aside the order dated 23.01.2017 made in I.A.No.2688 of 2016 on the file of the learned Principal Judge, Family Court, Chennai. No costs. Consequently, connected Miscellaneous Petitions are closed.

15.06.2017

Index: Yes/No

cgi/kj

To

The Principal Family Court, Chennai.

V.M.VELUMANI,J.

Cgi/kj

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