

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.03.2017**

CORAM:

THE HONOURABLE MRS.**JUSTICE PUSHPA SATHYANARAYANA**

C.R.P. (P.D).730 of 2017 and
C.M.P.No.3631 of 2017

N.Thangamani ...Petitioner/Respondent/II Petitioner
versus

S.Meivel ...Respondent/Petitioner/I Petitioner

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to allow the above Civil Revision Petition by setting aside the final order dated 02.02.2017 made in C.F.R.No.7164 of 2016 in H.M.O.P.No.161 of 2016 by the Sub Court, Bhavani, with costs.

For Petitioner : Mr.N.Mariappan

For Respondent : Mr.M.Balaji

ORDER

This revision petition is filed by the petitioner-wife, challenging the order passed in C.M.R.No.7164 of 2016, refusing to waive six months period contemplated under section 13(B) of the Hindu Marriage Act, 1955, after filing of the petition for divorce by consent.

2. The Sub Court, Bhavani has referred to the Judgments of the Hon'ble Supreme Court in which the powers under article 142 of the Constitution of India has been exercised and the six months period was waived. The said power is not available to the High Court or the Subordinate Courts and the six months period contemplated under section 13-B cannot be waived as the same is mandatory.

3. In the present case, it appears that there was an alleged proceedings between the parties which has come up to this Court in a Transfer Civil Miscellaneous Petition by which a Joint Memorandum of Compromise was filed on 28.11.2016. It is agreed therein that the parties would file divorce petition by mutual consent under section 13-B pursuant to which the H.M.O.P.No.161 of 2016 was filed.

4. The said H.M.O.P. was filed on 16th December 2016 and the six months period expires on 18.06.2017. As this Court has got no power to waive six months period mentioned in section 13-B of the Act, the parties have to wait for the cooling period to get over. However, it is complained by the learned Counsel appearing for both sides that the matter has been periodically posted every month for the appearance of the parties. Once the date is given after six months, it is not required

for the parties to appear before the court at frequent intervals before the said date. Therefore, the Sub Court, Bhavani, is directed to list the matter on 19th June, 2017 on which date the parties have to appear before the said court and orders may be passed by the trial court.

5. With the said observation, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

02.03.2017

Index:Yes/No
rn/tsi

To

The Subordinate Judge, Bhavani.

PUSHPA SATHYANARAYANA, J

rn/tsi

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