

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2017

CORAM

THE HONOURABLE THIRU JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.2924 of 2016 and
C.M.P.No.14910 of 2016

S.Gugan

... Petitioner

v.

R.Nisha

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.02.2016 made in I.A.No.965 of 2015 in C.F.R.No.3605 of 2015 on the file of the Family Court, Erode.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.A.K.Kumarasamy, Senior Counsel
for Mr.S.Kaithamalaikumaran

ORDER

Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.A.K.Kumarasamy, learned senior counsel for the respondent.

2.Challenging the fair and final order passed in I.A. No.965 of 2015 in C.F.R.No.3605 of 2015 on the file of the Family Court, Erode, the petitioner, who is the husband of the respondent, has filed the above Civil Revision Petition.

3.The respondent/wife filed the Original Petition in H.M.O.P.No.78 of 2016 for divorce on the ground of cruelty.

4.According to the respondent, the marriage was performed on 22.04.2015 and the petition for divorce was filed on 27.11.2015. Since the Original Petition was filed within one year from the date of marriage, the respondent has filed an application in I.A.No.965 of 2015 seeking leave to file the divorce petition before the expiry of one year period and to prosecute the main petition on merits. The petitioner/husband filed his counter and opposed the petition. The Trial Court, taking into consideration the case of both parties, allowed the petition and granted leave to the respondent to file the Original Petition before the expiry of one year period.

5.In the judgment reported in **1999 (1) CTC 210 [Indumathi Vs. Krishnamurthy]**, this Court, relying upon Section 14(1) of the Hindu Marriage Act, held that the said provision does not bar the institution of the proceedings for divorce before the expiry of one year from the date of marriage. This Court, also in the judgment reported in **2013 (2) CTC 320**

[A.Ganesh Babu vs. A.P.Arthi], held as follows:

“...

39. But, in this case, I do not think that the wife deliberately suppressing anything, filed such application without seeking leave. As such, I cannot simply hold that she was guilty of laches and magna neglegentia, and consequently, her conduct should be deprecated in filing the petition for divorce within one year from the date of marriage. Whenever anything has occurred unwittingly, the Court has to take a lenient view. On the other hand, if the Court could see that with due deliberation or malice any such petitions are found filed within one year period, then in such cases alone, strict view has to be taken. So far this case is concerned, the very factum that the wife had chosen to file the application in I.A.No.26 of 2012 virtually seeking ex post facto leave, would demonstrate and display her bona fides also. Hence, I am of the view that in these exceptional circumstances, no interference is required.

40.I take it as an opportunity to mandate all the Courts below concerned that hereafter whenever any petition for divorce is filed within a period of one year from the date of marriage, the Courts should invariably return that petition without numbering it and unless leave is obtained, such petition for divorce should not be entertained. Point Nos.(i) and (ii) are answered accordingly.”

6.The ratio laid down by this Court in the above referred two judgments squarely applies to the facts and circumstances of the present case.

7.Following the ratios laid down in those judgments, I do not find any reason to interfere with the order passed by the Family Court, Erode. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : No
Internet : Yes
Gsa

24.03.2017

To

The Family Court,
Erode.

M. DURAISWAMY,J.

Gsa

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