



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2017

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.(MD) No.8295 of 2017

Dhivya Roopa

D/o.J.Sivakumar

[Represented through her power agent and
her father J.Sivakumar, S/o.Jeevarathinam]

... Petitioner

-vs-

1. Selvakumar

2. Saraswathy

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order of return dated 20.02.2017 passed in unnumbered M.C.No. of 2016 in A.No.6644 of 2016 by the learned Additional Mahila Court (JM Cadre), Madurai and to direct the learned Additional Mahila Court (JM Cadre), Madurai to number the same and to pass orders on merits within a stipulated time that may be fixed by this Hon'ble Court and to pass such other further reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

For Petitioner : Mr.V.Dhana Aravindha Balaji

ORDER

This petition has been filed to set aside the order of return dated 20.02.2017 passed in unnumbered M.C.No. of 2016 in A.No.6644 of 2016 by the learned Additional Mahila Court (JM Cadre), Madurai and to direct the learned Additional Mahila Court (JM Cadre), Madurai to number the same and to pass orders on merits.

2. Dhivya Roopa/the petitioner herein got married to Selvakumar on 25.05.2008 and that they have one child through the wedlock. On account of irreconcilable differences, they got estranged. Selvakumar had agreed to pay Rs.22,00,000/- as full and final settlement and on such agreement, they filed an application under Section 13-B of the Hindu Marriage Act for dissolving the marriage by mutual consent. They also entered into a separate agreement dated 17.12.2015, in which it is stated as follows:



"We both got married on 25.05.2008, with blessing of the both families, subsequent to that we got a female child and now we decided to get divorce due to the misunderstanding. For the above divorce, I have stated in my divorce proceeding that as I have given full and final settlement Rs.22,00,000/- but in real I have not given as stated in the affidavit filed on 17.12.2015, but I have assured through this MOU that within 1 year from the date of decree I shall pay the said Rs.22,00,000/- without fail."

3. Thus, from the above, it is apparent that Selvakumar had agreed to pay Rs.22,00,000/- to Dhivya Roopa after one year of obtaining the decree of divorce. The decree of divorce was dated 08.02.2016 and even after a lapse of one year, Selvakumar did not honour the agreement.

4. After the divorce, Dhivya Roopa got married to another person and similarly, Selvakumar also got married to another lady. Dhivya Roopa filed a petition under the Domestic Violence Act before the learned Additional Mahila Court (JM Cadre), Madurai through her Power Agent and father Sivakumar, which has been returned by the Magistrate on the following reasoning:

"1. Petitioner and 1st respondent applied for mutual divorce that has been granted by the Sub Court, Kanchipuram in the year of 2016.

2. Now the petitioner and 1st respondent are now remarried that was admitted by the petitioner.

3. Section 12 of Domestic Violence is not maintainable one.

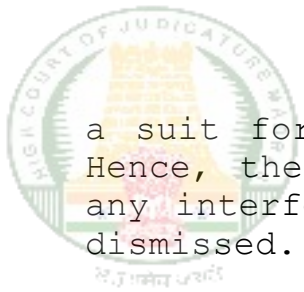
4. Prayer claimed by the petitioner under section 18, 19, the petitioner is disqualifying from that.

5. If there is further any harassment, private complaint is the proper solution."

Aggrieved by the same, Dhivya Roopa is before this Court. Since the Registry entertained doubts about the maintainability of the petition, the matter is actually listed today for deciding the issue of maintainability. After hearing the learned counsel for the petitioner, this Court has directed the Registry to number the petition and on its numbering, has passed the final order at the admission stage itself, by the consent of the learned counsel for the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/>

5. In the considered opinion of this Court, the remedy that lies for Dhivya Roopa is not under the D.V.Act, but only filing of



a suit for recovery of money on the agreement dated 17.12.2015. Hence, the order of return is legally valid and does not warrant any interference by this Court. Accordingly, this petition stands dismissed.

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Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To:

The Additional Mahila Court (JM Cadre),
Madurai.

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