



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2247 of 2016 (PD)
& C.M.P. (MD) No.10419 of 2016

P.Janaki

.. Petitioner

Vs.

R.Hariharan

.. Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the fair and decreetal order, dated 22.09.2016, passed in I.A.No.52 of 2016 in H.M.O.P.No.93 of 2015 by the learned Principal Subordinate Judge, Dindigul and set aside the same and allow the above CRP.

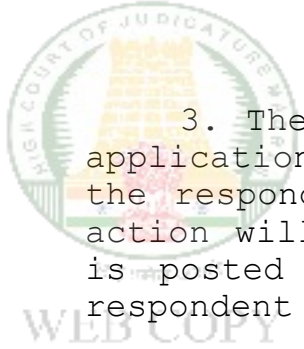
For Petitioner : Mr.T.Antony Arul Raj

For Respondent : Mr.S.Rajasekar
for Ms.J.Anandhavalli

ORDER

This Civil Revision Petition is filed against the fair and decreetal order, dated 22.09.2016, passed in I.A.No.52 of 2016 in H.M.O.P.No.93 of 2015 by the learned Principal Subordinate Judge, Dindigul.

2. The petitioner is the wife and the respondent is the husband. Originally, the respondent filed H.M.O.P.No.68 of 2013 under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, before the Subordinate Court, Ambasamudram, for dissolution of marriage on the ground of cruelty. Subsequently, the petitioner filed Tr.C.M.P.(MD) No.20 of 2014 before this Court and this Court, vide order dated 26.03.2015, directed the learned Subordinate Judge, Ambasamudram, to transfer the said H.M.O.P. to the Subordinate Court, Dindigul. Accordingly, the said H.M.O.P. was transferred to the Subordinate Court, Dindigul and renumbered as H.M.O.P.No.93 of 2015. The petitioner filed counter affidavit on 08.01.2016. The petitioner has also filed M.C.No.77 of 2013 before the Chief Judicial Magistrate Court, Dindigul, for maintenance. The respondent filed I.A.No.52 of 2016 for amendment of the petition to include the averments that the petitioner was insisting the respondent to follow Christianity and treated him cruelly. According to the respondent, by inadvertence, the said averment was not incorporated in the



3. The petitioner filed counter affidavit and opposed the said application for amendment and stated that by filing this petition, the respondent is trying to introduce a new case and the cause of action will be changed, if the amendment is allowed. The H.M.O.P. is posted for enquiry and only to drag on the proceedings, the respondent has filed the application for amendment.

4. The learned Principal Subordinate Judge, Dindigul, considering the averments made in the affidavit, counter affidavit and also the materials available on record, allowed the application holding that the amendment sought for by the respondent, will not change the cause of action and also will not introduce a new case and as a compensation, the learned Principal Subordinate Judge, awarded a cost of Rs.750/- to be paid by the respondent to the petitioner on or before 03.10.2016.

5. Against the said order, the petitioner has come out with the present Civil Revision Petition.

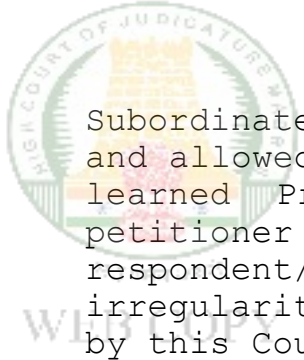
6. The learned counsel for the petitioner reiterated the averments made in the counter affidavit and the grounds raised in the Civil Revision Petition and submitted that the learned Principal Subordinate Judge, Dindigul, failed to see that the respondent is introducing a new case and cause of action by way of amendment to the effect that the petitioner is insisting the respondent to follow Christianity and prayed for allowing the Civil Revision Petition.

7. The learned counsel for the respondent submitted that the respondent has filed H.M.O.P. for dissolution of marriage on the ground of cruelty. In addition to the averments made in the petition, the fact that the petitioner is insisting the respondent to follow Christianity, is to be incorporated. The said averments, by inadvertence, was not incorporated in the H.M.O.P. He further submitted that by amendment, no new case has been introduced by the respondent and prayed for dismissal of the Civil Revision Petition.

8. I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.

9. From the materials available on record, it is seen that the the respondent filed H.M.O.P., for dissolution of marriage on the ground of cruelty. The respondent is seeking to amend the H.M.O.P. to include the averments that the petitioner is insisting the respondent to follow Christianity. According to the petitioner, by this amendment, the respondent is introducing a new case and new cause of action. The respondent filed the application only to drag on the proceedings.

10. From the averments in the affidavit seeking amendment and the averments in the H.M.O.P., it is seen that by this amendment, no new case or cause of action is introduced. The learned Principal



Subordinate Judge has considered this aspect in proper perspective and allowed the application by giving cogent and valid reasons. The learned Principal Subordinate Judge has also compensated the petitioner by awarding a sum of Rs.750/- as cost to be paid by the respondent/applicant. In the circumstances, there is no irregularity or illegality in the said order warranting interference by this Court.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, it is open to the petitioner to file additional counter affidavit to the averments now added by the respondent/applicant, which is permitted to be taken in the petition in H.M.O.P. The H.M.O.P. is of the year 2015. The learned Principal Subordinate Judge, Dindigul, is directed to dispose of H.M.O.P.No.93 of 2015, as expeditiously as possible, in any event, not later than 30.06.2017.

SD/-

ASSISTANT REGISTRAR (CS-I)

/TRUE COPY/

SUB ASSISTAT REGISTRAR

To

The Principal Subordinate Judge,
Dindigul.

+1 CC TO MR. T.ANTONY ARUL RAJ, ADVOCATE, SR NO.6997

+1 CC TO MR. T.LAJAPATHI ROY, ADVOCATE, SR NO.6837

smn2

MAS/SV-MMS:28.02.2017:3P/4C

C.R.P (MD) No.2247 of 2016 (PD)
& C.M.P. (MD) No.10419 of 2016
07.02.2017