



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.10.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) .No.2408 of 2016 (NPD)

WEB COPY

L.Medline Kiruba

... Petitioner/Petitioner

Vs.

A.Samuel Cherian

... Respondent/Respondent

Prayer: Petition is filed under Article 227 of the Constitution of India to number the divorce petition filed under Section X(1)(ix) of the Divorce Act in unnumbered IDOP Sr.No.3616 of 2016 (Filing No.DVOP/686/2016 CNR No.TNKK010030902016) on the file of the District and Sessions Judge, Kanyakumari District at Nagercoil.

For Petitioner : Mr.S.Sivakumar

ORDER

This civil revision petition is filed to number the divorce petition filed under Section X(1)(ix) of the Divorce Act in unnumbered IDOP Sr.No.3616 of 2016 (Filing No.DVOP/686/2016 CNR No.TNKK010030902016) on the file of the District and Sessions Judge, Kanyakumari District at Nagercoil.

2. The petitioner and the respondent are wife and husband respectively and their marriage took place at the New Life Fellowship Churches of India, Bombay, on 18.09.2015. It is averred that the respondent deserted the petitioner in Nagercoil on 10.11.2015 and thereafter she was living separately. Therefore the petitioner filed a divorce petition before the District and Sessions Judge, Kanyakumari District at Nagercoil under Section X (1)(ix) of the Divorce Act. However, the same was returned by the learned Trial Judge with an endorsement that as two years time was not completed for seeking divorce as specified under the Divorce Act and as the same is against the law. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner reiterated the averments made in the affidavit and submitted that now the said period of 2 years also over.

4. In this regard it is useful to refer the decision of the Hon'ble Supreme Court in Civil Appeal No.11158 of 2017, dated 12.09.2017, (Amardeep Singh v. Harveen Kaur), wherein the Hon'ble Supreme Court at paragraph 21 has held as follows:-



"21. Since we are of the view that the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."

5. Be that as it may, the marriage took place between the petitioner and the respondent on 18.09.2015 and in support of the same the petitioner has also marked the certificate of Marriage at serial No.1 in the list of documents. At this distant point of time, the reason assigned by the learned Trial Judge for not numbering the petition would no longer survive.

6. In view of the above position, the learned District and Sessions Judge, Kanyakumari District at Nagercoil, is directed to number the divorce petition and decide the same in accordance with law. The Office is directed to return the original impugned order and petition to the petitioner after obtaining the certified copy so as to enable her to file the same before the Court below. The civil revision petition is allowed. No costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The District and Sessions Judge,
Kanyakumari at Nagercoil.

Copy to

The Record Keeper,
VR Section.
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Sivakumar, Advocate Sr.No.82397

JIKR

VB/SV/MMS/SAR3/01/11/2017/2P/4C