



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).Nos.2643 of 2016 and

CMP(MD).No.12429 of 2016

T. Manohar : Petitioner

Vs.

S. Usha : Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order made in I.A.No.43 of 2016 in HMOP.No.107 of 2013 on the file of the Principal Subordinate Judge, Nagercoil, dated 06.10.2016.

For Petitioner : Mr.T. Selvakumaran

ORDER

This Civil Revision petition is filed to set aside the order made in I.A.No.43 of 2016 in HMOP.No.107 of 2013 on the file of the Principal Subordinate Judge, Nagercoil, dated 06.10.2016.

2. The petitioner is the respondent in HMOP.No.107 of 2013 filed by the respondent, wife for divorce. The petitioner filed HMOP.No.3 of 2014 for restitution of conjugal rights. Parties are contesting the HMOP. HMOPs were taken up for final hearing. The respondent filed proof affidavit and it was posted for cross examination on behalf of the petitioner. At that stage, the petitioner filed I.A.No.43 of 2016 for referring the matter for counselling as he wants to live with the respondent. The respondent filed counter and opposed the said application and contended that only due to torture and cruelty, she filed petition for divorce. Petitioner filed petition only to drag on the proceedings, after taking number of adjournments for cross examination. The respondent and children are living separately and they have no intention to live with the petitioner and the respondent is not interested in referring the matter for conciliation and prayed for dismissal of the said application.

3. The learned Judge considering the averments in the affidavit and counter affidavit and taking note of the fact that the respondent is not willing for counselling, dismissed the application.

4. Against the said order of dismissal, present Civil Revision Petition has been filed.

5. The learned counsel appearing for the petitioner reiterated the averments made in the grounds and submitted that the petitioner is aged about 57 years and there is possibility of settlement and prayed for allowing the Civil Revision Petition. In support of his contention, the learned counsel appearing for the petitioner relied on the Judgment reported in **AIR 2007 SCC 2083 (Jagraj Singh Vs. Birpal kaur)** and submitted that the matrimonial dispute required counselling.



6. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. The respondent wife filed HMOP.107 of 2013 for divorce and the petitioner filed HMOP.No.3 of 2014 for restitution of conjugal rights and in both HMOP, trial has commenced. The respondent wife filed proof affidavit. After taking number of adjournments for cross examination of the respondent, the petitioner filed Interlocutory application for referring the matter for counselling. The respondent, wife is not willing for counselling and the learned Judge has considered all the materials on record, dismissed the Interlocutory Application filed by the petitioner. It is pertinent to note that the petitioner has come out with the present application, when the HMOPs are posted for cross examination of the respondent by the petitioner.

8. In the circumstances, the learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application in I.A.No.43 of 2016 in HMOP.No.107 of 2013. Further, the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court. The Judgment relied on by the petitioner is not applicable to the facts of the present case.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/TRUE COPY/

Sub Assistant Registrar

To

The Principal Subordinate Judge, Nagercoil.

+1 cc to MR.T.Selva Kumar, ADVOCATE, SR NO:709

CRP (MD).Nos.2643 of 2016 and
CMP(MD).No.12429 of 2016
03.01.2017

trp

sva/bs/01.03.2017/2p/3c