

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.6218 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the petitioner against the order dated 19.11.2016 passed in I.A.No.1005 of 2016 in HMOP No.7 of 2014 by the Principal Senior Civil Judge, Tirupati, whereby the petition filed by the petitioner under Order XVII read with Section 151 of the Code of Civil Procedure and Rule 28 of Civil Rules of Practice seeking amendment of the petition by deleting the words 'under Section 13 (1) (b) of Hindu Marriage Act' and adding 'Section 13 (1) (ia) (ib) of Hindu Marriage Act', was dismissed.

In spite of service of notice, there is no representation on behalf of the respondent.

Heard the learned counsel for the petitioner and perused the record.

The petitioner/plaintiff filed HMOP No.7 of 2014 seeking divorce under Section 13 (1) (b) of Hindu Marriage Act. During pendency of the same, I.A.No.1005 of 2016 came to be filed seeking amendment of the plaint to the extent of change in section of law from Section 13 (1) (b) of Hindu Marriage Act to Section 13 (1) (ia) (b) of Hindu Marriage Act.

A counter came to be filed opposing the same, contending that earlier the petitioner filed I.A.No.977 of 2015 and after dismissal of the said petition, present petition is filed seeking the very same relief. Hence, the present petition is liable to be dismissed.

After hearing the rival submissions made, the Court below dismissed the application filed by the petitioner. Aggrieved by the same, present revision is filed.

The only point that arises for consideration of this Court in this revision is 'whether the Court below was right in dismissing the application filed by the petitioner seeking amendment of Section of Law?'

It is to be noted that earlier, the petitioner filed I.A.No.977 of 2015 seeking a comprehensive amendment of the plaint. The said I.A. came to be dismissed on 12.04.2016 for default for non-payment of costs.

In *Mangayarakarasi Ammal v. Nagammal*¹ the Madurai Bench of Madras High Court by relying on the ratio laid down by the Supreme Court in *Pandurang Ramchandra Mandlik and another v. Smt.Shantabai Ramchandra Ghatge and others*² and *U.P.E. Supply Co. v. T.N.Chatterjee*³, held that second application for the same relief is maintainable as the issue has not been decided finally and conclusively in the earlier Application.

The above said ratio has also been followed by the Madurai Bench of Madras High Court in *M.Nachiappan v. A.Nachiappan* [CRP (PD) (MD) No.204 of 2010 decided on 02.08.201].

Another factor, which influenced the Court below in dismissing the application was that the case was posted for arguments. However, the copy application of the docket proceedings dated 28.01.2017 of the Court below filed by the

¹ 2009 (5) CTC 444

² AIR 1989 SC 2240

³ AIR 1972 SC 1201

learned counsel for the petitioner would clearly indicate that issues are not yet framed. If it is so, the petitioner can be given an opportunity for amendment of Section of Law.

In view of the ratio laid down in two judgments referred to above and considering the facts in issue, the Court below is directed to permit the petitioner to amend the plaint, if the issues are not yet framed, by substituting the words 'Under Section 13 (1) (b) of Hindu Marriage Act' with the words 'Under Section 13 (1) (ia) (ib) of Hindu Marriage Act'.

Accordingly, the Civil Revision Petition is disposed of.

Miscellaneous petitions pending in this revision, if any, shall stand closed. No costs.

09.03.2017
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JUSTICE C. PRAVEEN KUMAR