

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.06.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(PD)No.1561 of 2018

A.Vijaya Parthiban

... Petitioner

Vs.

R.Priyawandani

... Respondent

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.01.2018 passed in I.A.S.R.No.13887 of 2107 in H.M.O.P.S.R.No.13888 of 2017 on the file of the learned Subordinate Judge, Tambaram.

For Petitioner : P.A.R.Sakthivel

For Respondent : Mr.S.A.Sithik

ORDER

सत्यमेव जयते

The civil revision petition has been filed against the order dated 12.01.2018 passed in I.A.S.R.No.13887 of 2007 in H.M.O.P.S.R.No.13888 of 2017 by the learned Subordinate Judge, Tambaram.

2 The revision petitioner earlier filed H.M.O.P.No.361 of 2015

before the learned Subordinate Judge, Tambaram, for divorce on the ground of mental cruelty and later the same was withdrawn by him in pursuance of the settlement arrived between the petitioner and respondent. On the very same day, the petitioner and respondent filed H.M.O.P.S.R.No.13888 of 2017 for divorce by mutual consent. They also filed an interlocutory application seeking waiver of waiting period of six months, which was dismissed by the trial Court by an order dated 12.01.2018.

3 Aggrieved against the order dated 12.01.2018, the revision petitioner has come forward with the present civil revision petition.

4 The learned counsel for the revision petitioner would submit that the trial Court without even numbering and disposing the main H.M.O.P, dismissed the interlocutory application seeking waiver of waiting period of six months, which is contrary to law. The trial Court ought to have numbered and disposed the main H.M.O.P. before taking the interlocutory application on file. The learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in ***Civil Appeal No.11158 of 2017 (Amardeep Singh vs. Harveen Kaur)***, wherein it is held as follows:

"18. Applying the above to the present situation, we are of the view that where the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13b(2), it can do so after considering the following:

- I. the statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself;*
- II. all efforts for mediation/conciliation including efforts in terms of Order XXXIIA Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;*
- III. the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;*
- IV. the waiting period will only prolong their agony*

19. The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver.

20. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court.

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.

22. Needless to say that in conducting such proceedings the Court can also use the medium of video conferencing and also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reason as may satisfy the Court, to advance the interest of justice."

5 The learned counsel for the petitioner would further submit that the above decision of the Hon'ble Apex Court would directly apply to the present case. Further the waiting period of six months under Section 13b(2) of the Hindu Marriage Act, 1955, was also over, still the main H.M.O.P. is pending before the same Court. Hence the order dated 12.01.2018 is liable to be set aside.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 On a perusal of the order dated 12.01.2018, it reveal that the main H.M.O.P itself was filed for divorce by mutual consent and the interlocutory application for waiving the statutory period of six months, which is also in SR stage, was dismissed. The petitioner and respondent were present before the Subordinate Judge, Tambaram, and filed the petition in H.M.O.P.S.R.No.13888 of 2017 for divorce by mutual consent. Now, the cooling period of six months was already completed.

8 In view of the decisions of the Hon'ble Apex Court as cited supra, the Subordinate Judge, Tambaram, is directed to take up the main H.M.O.P.S.R.No.13888 of 2017 on file and dispose of the same on the very same day itself in accordance with the directions given by the Hon'ble Apex Court especially in paragraph No.22 of the said judgment as cited supra.

9 With the above observations and direction, the civil revision petition is disposed of. No costs.

06.06.2018

Internet: Yes/No

Speaking/Non-Speaking Order

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To

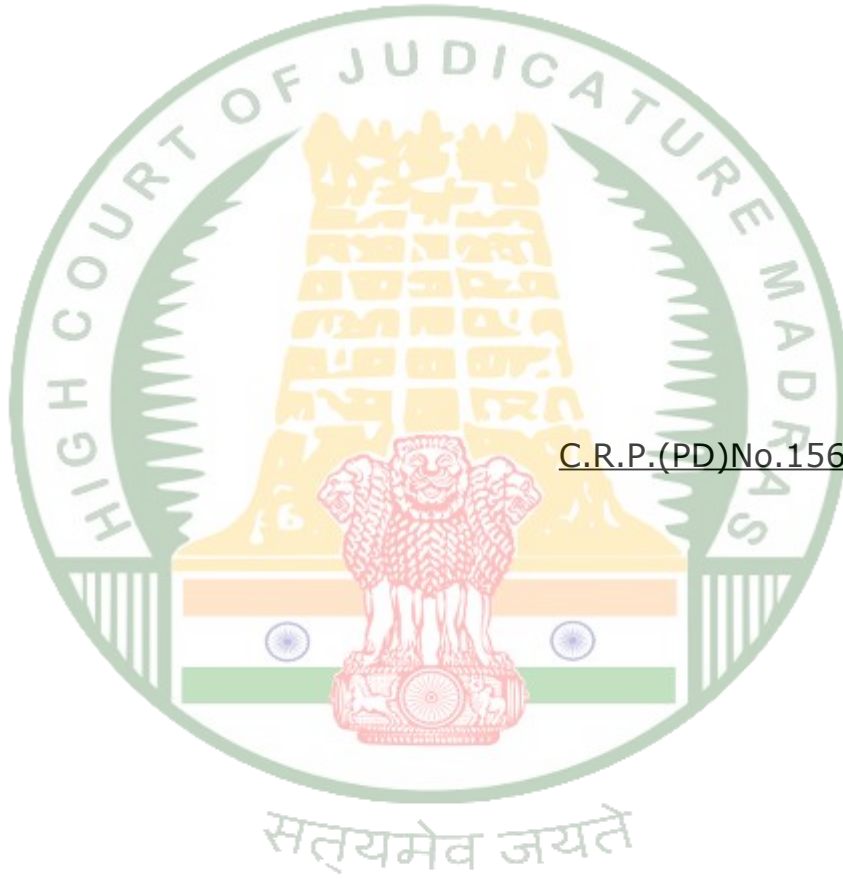
The Subordinate Judge,
Tambaram.

सत्यमेव जयते

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P.VELMURUGAN, J.,

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