

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.04.2018

Pronounced on : 27.06.2018

CORAM

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

C.R.P.(PD)Nos.3944 & 3945 of 2017
and C.M.P.No.18437 of 2017

C.R.P.No.3944 of 2017
and C.M.P.No.18437 of 2017

Varsha Menon

...Petitioner

Versus

1. R.Karthikeyan
2. Sathishkumar

... Respondents

Prayer : Civil Revision Petition filed Under Article 227 of the Constitution of India to set aside the petition and order made in I.A.No.8 of 2017 in H.M.O.P.No. 149 of 2016 dated 23.05.2017 on the file of the learned Principal Family Judge, Coimbatore.

For Appellant : Mr.V.Raghavachari
for Mr.Ma.P.Thangavel

For Respondents
For R1 : Mr.R.Nandhakumar
For R2 : Given up

C.P.R.No.3945 of 2017 :-

Varsha Menon

...Petitioner

Versus

R.Karthikeyan

...Respondent

Prayer : Civil Revision Petition filed Under Article 227 of the Constitution of India to set aside the fair and final order made in I.A.No.11 of 2017 in I.A.No.385 of 2016 in H.M.O.P.No.149 of 2016 dated 06.04.2017 on the file of the learned Principal Family Judge, Coimbatore.

For Appellant : Mr.V.Raghavachari
for Mr.Ma.P.Thangavel

For Respondent : Mr.R.Nandhakumar

COMMON ORDER

These Civil Revision Petitions have been filed against the Orders dated 23.05.2017 and 06.04.2017 made in I.A.No.8 of 2017 in H.M.O.P.No. 149 of 2016 and I.A.No.11 of 2017 in I.A.No.385 of 2016 in H.M.O.P.No.149 of 2016, respectively, on the file of the learned Principal Family Judge, Coimbatore.

2. The first respondent/husband filed a petition for divorce against the revision petitioner in HMOP No.149 of 2016 on the file of the Principal Family Judge, Coimbatore, under Section 13(1)(i a) of the Hindu Marriage Act. When the matter was pending before the Family Court, Coimbatore, the revision petitioner/wife filed an application in I.A.No.385 of 2016 in H.M.O.P.No.149 of 2016 for interim maintenance and the first

respondent/husband has also filed his counter. In the mean while, the first respondent filed an application in I.A.No.8 of 2017 in H.M.O.P.No.149 of 2016, to implead one Sathish Kumar/Proposed second respondent as adulterer. The first respondent/husband has filed yet another application in I.A.No. 11 of 2017 in I.A.No.385 of 2016 in H.M.O.P.No.149 of 2016 to receive the additional counter. After hearing the matter, the learned Family Court Judge allowed the both applications and impleaded the second respondent herein in the HMOP. No.149 of 2016. Aggrieved against the said orders passed by the learned Family Court Judge, Coimbatore the revision petitioner/wife has preferred the present Civil Revision Petitions.

3. The learned counsel for the revision petitioner/wife would submit that the first respondent/husband filed a divorce petition against the revision petitioner/wife on the file of the Principal Family Court, Coimbatore on the ground of cruelty with the false allegations. After service of summons, the revision petitioner has filed an interlocutory application in I.A.No.385 of 2016 in HMOP.No.149 of 2016 for interim maintenance before the said Court. In the said application, the first respondent/husband filed a counter alleging that the revision petitioner/wife is leading immoral life and she would not entitle to get

maintenance. When the petition was pending, in order to avoid the payment of maintenance, the first respondent/husband filed an application, in IA.No.11 of 2017 in I.A.No.385 of 2016, to receive the additional counter in the said I.A., with false allegations that the revision petitioner/wife is leading immoral life with the proposed second respondent in the above divorce petition. The first respondent/husband has filed yet another application in I.A.No.8 of 2017 in H.M.O.P.No. 149 of 2016 to implead the second respondent as proposed party in the main HMOP. The learned Family Court Judge, Coimbatore heard both the applications in I.A.No.8 of 2017 in HMOP.No.149 of 2016 and I.A.No.11 of 2017 in I.A.No.385 of 2016 in HMOP.No. 149 of 2016 and allowed the same. Therefore, the revision petitioner/wife has filed two separate revision petitions in C.R.P.Nos. 3944 and 3945 of 2017 before this Court.

3.1. The learned counsel for the revision petitioner would further submit that the allegations leveled in the affidavit filed by the first respondent is false and the learned Family Court Judge, Coimbatore has failed to considered the nature of the allegations, which is not taken in the main application. Only in order to avoid to payment of interim maintenance, the first respondent has come forward with the false allegations and the learned Family

Court Judge, Coimbatore has failed to considered the same and allowed both the applications, simply says that there is no prejudice cause to the revision petitioner/wife, if the interlocutory application, to receive the additional counter, is allowed. In I.A.No.8 of 2017 to implead the proposed party as second respondent in HMOP.No. 149 of 2016 as adulterer, the Family Court has passed only the docket order without any reasons and no detailed order was passed and both the orders are liable to be set aside and the revision petitions have to be allowed.

4. The learned counsel for the first respondent/husband in both revision petitions would submit that the first respondent is the husband and the revision petitioner is the wife. The first respondent has filed a divorce application against the revision petitioner on the ground of cruelty. In the divorce petition, the first respondent has stated the character of the revision petitioner. Initially, the first respondent/husband has filed a petition on the ground of adultery and cruelty. Since he has no details about the adulterer, the divorce petition was filed on the ground of cruelty alone. Thereafter, the revision petitioner/wife was filed an interlocutory application in I.A.No.385 of 2016 for interim maintenance, in which, the first respondent filed a counter.

During the pendency of the application, the first respondent was able to get the information regarding the illegal intimacy of the revision petitioner with several persons and also the second respondent/proposed party. Therefore, he has filed the application to receive the additional counter in the above said I.A. to bring the actual facts before the Family Court. Thereafter, he filed yet another application to implead the proposed party/second respondent as adulterer. The learned Family Court Judge, Coimbatore heard both applications and allowed the applications that there is no prejudice would be caused to the revision petitioner, if the petitions are allowed and the matter has been decided in the main petition. Hence, there is no reason to interfere with the order passed by the trial Court and prays for dismissal of these revision petitions.

5. Heard the submissions made on either side and also perused the available records placed before this Court.

6. It is not in dispute that the first respondent and revision petitioner are husband and wife and their marriage was solemnized on 25.05.2014. The first respondent was filed a petition for divorce on the ground of cruelty under

Section 13(1)(i a) of the Hindu Marriage Act against the revision petitioner in HMOP.No.149 of 2016 before the Family Court, Coimbatore. When the matter was pending, the revision petitioner/wife has filed an application in I.A.No.385 of 2016 for interim maintenance and the first respondent has also filed counter. Mean while, the first respondent filed an application in I.A.No.8 of 2017 in the divorce petition to implead the second respondent as proposed party as adulterer. While, both the applications were pending, the first respondent filed yet another application before the Family Court, Coimbatore, in I.A.No.11 of 2017 in I.A.No.385 of 2016 in HMOP.No.149 of 2016 to receive the additional counter filed by the first respondent/husband. After hearing, both applications were allowed by the Family Court, Coimbatore.

7. On a perusal of order dated 06.07.2017, passed by the Family Court, Coimbatore in I.A.No.11 of 2017 in I.A.No.385 of 2016 in HMOP.No.149 of 2016, though the revision petitioner/wife has filed an application for maintenance, the first respondent filed a counter, later on, the first respondent filed an application stating the reason that he came to know the details of adulterer made by the revision petitioner/wife, only after filing of the counter and he has collected the materials and all other facts and then he came to

know that the revision petitioner is leading an adulterous life with the proposed party/second respondent. Therefore, he filed an application in I.A.No.8 of 2017 in HMOP.No.149 of 2016 for impleading him in the main HMOP as the second respondent. Thereafter, he filed yet another application in I.A.No.11 of 2017 in I.A.No.385 of 2016 in HMOP.No.149 of 2016 to receive the additional counter stating that the revision petitioner is not entitled to get maintenance, since she is having illegal intimacy with several persons and also leading adulterous life with the second respondent/proposed party.

8. This Court considered the facts and circumstances of the case and even perusal of the averments made in the petition for divorce in HMOP.No.149 of 2016, the first respondent attacked the character of the revision petitioner. Subsequently, in the petition filed by the first respondent/husband, to receive the additional counter, he has also stated that the revision petitioner has illegal intimacy with the several persons and also she has illegal intimacy with the second respondent and therefore, he filed an application to receive additional evidence and also to implead him as second respondent.

9. On a perusal of order in I.A.No.11 of 2017 in I.A.No.385 of 2016 in HMOP.No.149 of 2016, the learned Family Court Judge, Coimbatore has rightly observed that in the affidavit, the first respondent/husband has clearly stated that he came to know about the details of the illegal intimacy of the revision petitioner/wife, after filing of the counter in the interlocutory application and also the main HMOP. Therefore, he filed an application to received the additional counter with the additional particulars. Therefore, the Family Court, Coimbatore has found that there would be no prejudice caused, if the petition is allowed.

10. On a perusal of the entire materials, it came to light that the first respondent/husband made allegations that the revision petitioner/wife has illegal intimacy with the several persons, but he could not find out the specific details. Even in the main HMOP petition the first respondent filed a petition under Section 13(1) (b) & (i)(a) of Hindu Marriage Act and subsequently he cancelled the sub section (b). After filing of interim maintenance application by the revision petitioner/wife, the first respondent/ husband filed an application in I.A.No.11 of 2017 for receiving additional counter, wherein he has stated

about the character of the revision petitioner/wife and also filed another application in I.A.No.8 of 2017 to implead the proposed party as second respondent. Therefore, the order passed in I.A.No.11 of 2017 in I.A.No.385 of 2016, seeking for interim maintenance, whether the revision petitioner is entitled to get interim maintenance can be decided after full fledged enquiry in I.A.No.385 of 2017, mere allowing the petition to receive additional counter, no prejudice would be caused to the revision petitioner/wife, since it is the issue which has to be decided finally in the application in I.A.No.385 of 2016 and it is the duty of the first respondent/husband to prove the allegations made in the counter affidavit and additional counter affidavit against the revision petitioner. While allowing the application the Family Court recorded a finding that no prejudice is going to be caused to the wife and given an opportunity to the husband to putforth his defence in the interim maintenance application filed by the wife. This Court finds no valid reason to interfere with the order passed in I.A.No.11 of 2017. Accordingly, the civil revision petition in C.R.P.No.3945 of 2017 is liable to be dismissed.

11. So far as the civil revision petition in C.R.P.No.3944 of 2017 is concerned, as contended by the learned counsel for the revision petitioner/wife, the trial Court has passed Docket order on 23.05.2017 and no

detailed order has been passed in I.A.No.8 of 2017 and the same is extracted hereunder :-

"Heard both counsel. The petitioner must be provided with an opportunity to put forth his contention. Hence the petition is allowed."

The respondent/husband filed an additional counter in I.A.No.385 of 2017 for interim maintenance, in which, he has made certain allegation regarding the character of the revision petitioner/wife. Further in the affidavit filed in the impleading application, he has stated the reasons for impleading the proposed party. The Family court while allowing the application has not passed any detailed order, but given valid reason for allowing the application. Mere impleading a person will not cause any prejudice to the revision petitioner/wife and an opportunity has to be given to the respondent/husband and it is for him to prove the allegation levelled against his wife. Therefore, the Family Court has not erred in allowing the I.A.No.8 of 2017. In order to give an opportunity to the respondent/husband in the main H.M.O.P.No.149 of 2016, the application was allowed. No prejudice would be caused to the revision petitioner/wife and to meet the ends of the justice and to in order avoid multiplicity of proceedings, this Court finds that there is no illegality or

irregularity found in the order passed by the Family Court. Accordingly, the civil revision petition in C.R.P.No.3944 of 2017 is liable to be dismissed.

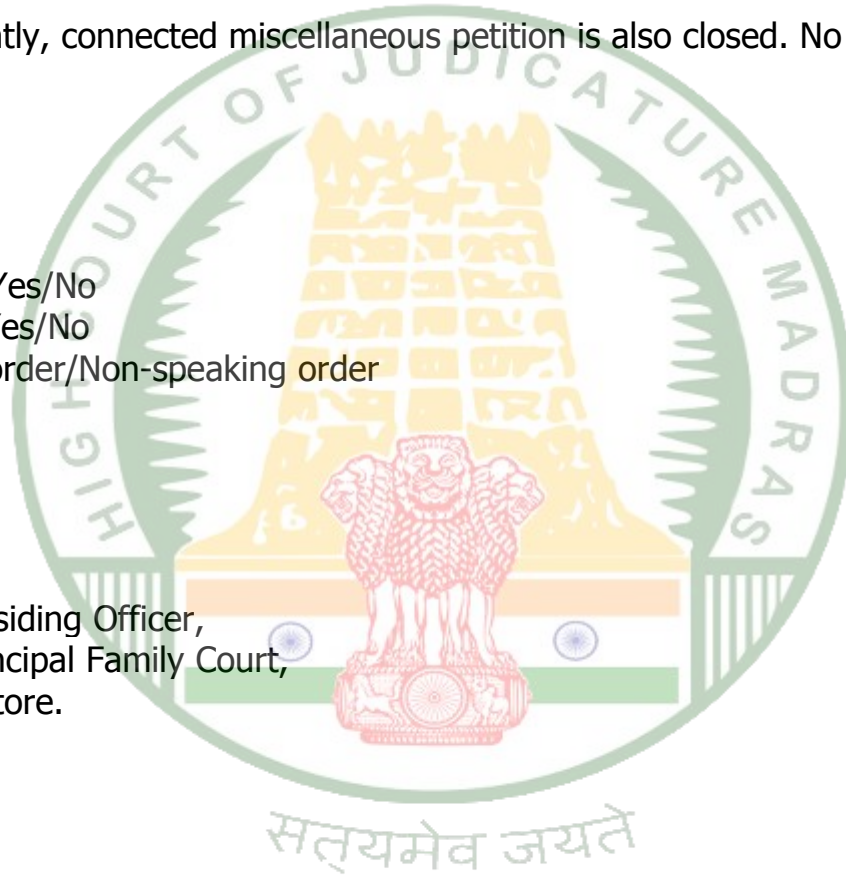
12. In the result, both the Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

27.06.2018

Index :Yes/No
Internet :Yes/No
Speaking order/Non-speaking order
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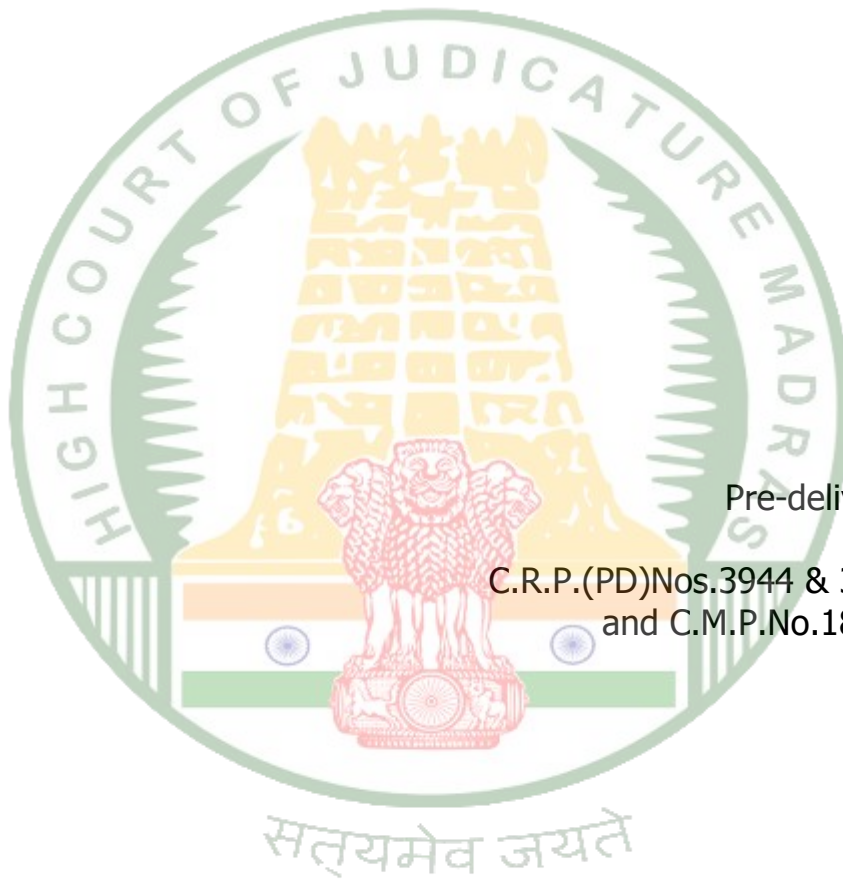
1. The Presiding Officer,
The Principal Family Court,
Coimbatore.



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P.VELMURUGAN, J.,

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Pre-delivery Order in
C.R.P.(PD)Nos.3944 & 3945 of 2017
and C.M.P.No.18437 of 2017

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27.06.2018.