

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.S. RAMESH

C.R.P.(PD).No.494 of 2017

E.Aswath Kumar Reddy

...Petitioner

-Vs-

S.Malini

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 23.12.2016 passed in I.A.No.1843 of 2016 in F.C.O.P.No.2367 of 2015 on the file of the Principal Judge, Family Court, Chennai.

For Petitioner : Mrs.Krishnapriya

For Respondent : Mr.J.Saravanel

ORDER

This Civil Revision Petition has been filed against the order dated 23.12.2016 rejecting the petitioner's petition in I.A.No.1843/2016 seeking to amend Order-VI Rule 17 & 18 of CPC. It is seen that the petitioner had earlier

filed a petition under Section 10 of the Hindu Marriage Act.

2. Pending the said original petition, he had filed an application in I.A.No.1843 of 2016, stating that the original application under Section 10 of the Hindu Marriage Act, came to be filed within a month's time from his marriage seeking relief of judicial separation as he could not file the petition for divorce on the ground of cruelty within one year. The Court below had observed that the petitioner was trying to achieve something which he cannot achieve through the original petition. According to the trial Court, if the amendment be allowed, the same would be nullified under Section 14 of the Act and therefore, rejected the application. As against the same, the Civil Revision Petition has been filed.

3. Mrs.Krishnapriya, the learned counsel appearing for the petitioner raised several grounds harping upon the merits of the case. The learned counsel also submitted that by permitting the petitioner to amend the prayer, no pre-judice will be caused to the respondent herein, since the parties are the same and that the grounds of cruelty had already been raised in his earlier petition filed under Section 10 of the Hindu Marriage Act.

4. Mr.J.Saravanel, the learned counsel appearing for the respondent, on the other hand, submitted that the ground on which the

petitioner herein seeks for amendment is baseless, since, in view of the proviso to Section 14 of the Hindu Marriage Act, the divorce petition could be filed within a period of one year. As such, he submits that in the absence of any valid reason, the amendment does not deserve consideration.

5. I have given my careful consideration to the submissions by the respective counsel. The present Civil Revision Petition has been filed by invoking Article 227 of the Constitution of India. As pointed out by the learned counsel for the respondent, the filing of an application for divorce, on the ground of cruelty within one year as contemplated under Section 14 of the Act, cannot be totally ruled out, in view of the proviso which enables filing of such an application.

6. Nevertheless, it is pertinent to mention here that the petitioner herein does not intend to live with the respondent and therefore has chosen to file an application to get the prayer amended. On the other hand, the learned counsel for the respondent submits that she is willing to reconcile with the petitioner herein.

7. In my view, if the petitioner herein is of the view that the grounds raised by him in the application for judicial separation are sufficient

cause of actions for seeking the relief of divorce, an opportunity can be given to him to have the prayer amended, instead of directing him to take recourse to further independent proceedings. In case, the respondent is aggrieved against such amendment, it would be always open to her to raise objections by establishing her case through oral and documentary evidence. Though the reason adduced by the petitioner seeking amendment, may not be strictly sustainable, this Court is of the view that in the interest of Justice and to avoid multiplicity of proceedings, the petitioner may be given an opportunity to proceed with the case to amend the prayer.

8. In the result, the order passed in I.A.No.1843 of 2016 is set aside. Consequently, the amendment sought for by the petitioner herein in I.A.No.1843 of 2016 in F.C.O.P.No.2367 of 2015, stands allowed. No costs.

सत्यमेव जयते

01.11.2018

Index : Yes/No

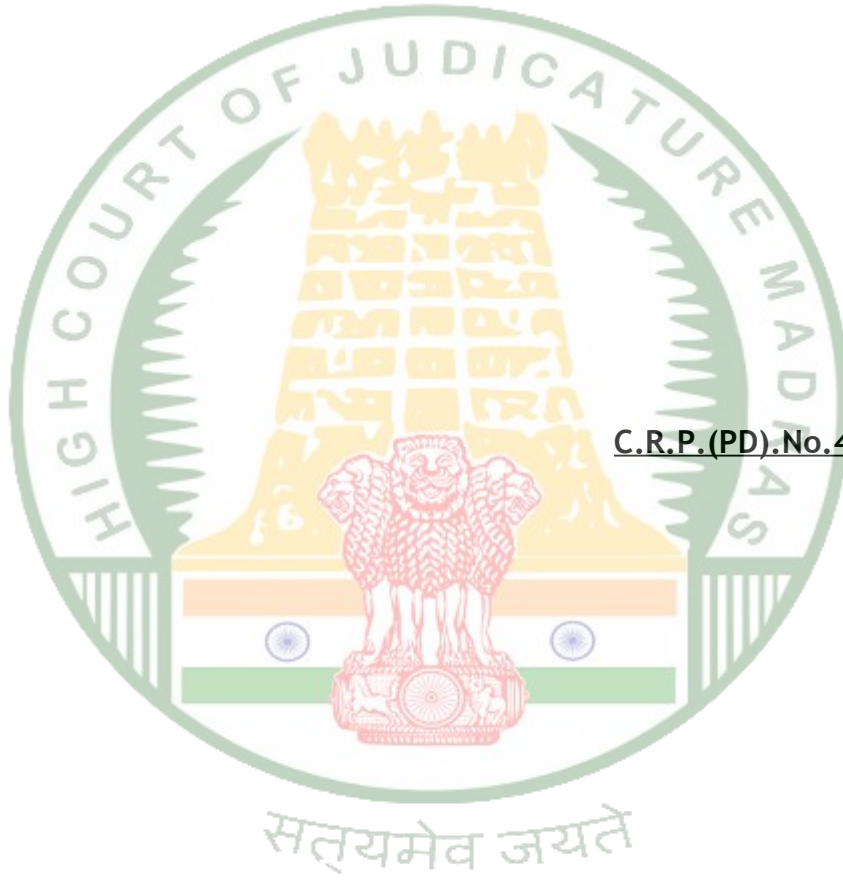
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Note: Issue order copy today (13.11.2018)

M.S.RAMESH,J.

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