



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2018

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

C.M.A(MD)NO.408 of 2018
and
C.M.P(MD)No.5150 of 2018

Vijayalakshmi @ P.Kalpana : Appellant/Petitioner/Respondent

.vs.

Jeganath Prabu : Respondent/Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code praying this Court to set aside the fair and decreetal order made in I.A.No.19 of 2018 in H.M.O.P.No.56 of 2017, dated 15.5.2018, on the file of Family Court, Srivilliputhur, Virudhunagar District.

For Appellant : M/s.M.Sathiamoorthy

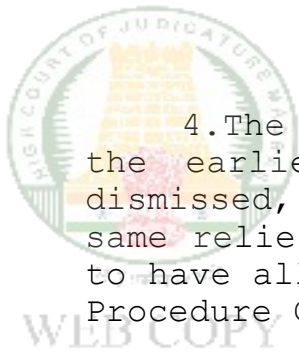
JUDGEMENT

[Judgement of the Court was made by K.RAVICHANDRABAABU,J.]

This Civil Miscellaneous Appeal is filed against the order made in I.A.No.19 of 2018 in H.M.O.P.No.56 of 2017, dated 15.05.2018, passed by the Family Court, Srivilliputhur in dismissing the application filed by the appellant herein under Order 7 Rule 11 of Civil Procedure Code, for rejecting the main O.P filed for divorce.

2.Heard the learned counsel for the appellant and perused the materials placed before us.

3.The appellant is the wife and the respondent is the husband. H.M.O.P.No.56 of 2017 was filed by the respondent/husband seeking for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The wife filed an application in I.A.No.19 of 2018 for rejecting the O.P mainly by contending that the present O.P is barred by res-judicata, in view of the fact that the earlier O.P filed by the respondent/husband in H.M.O.P.No.202 of 2009, seeking for divorce, was dismissed.



4.The learned counsel for the appellant contended that since the earlier O.P filed by the husband seeking for divorce was dismissed, he is not entitled to file the present O.P for the very same relief. Therefore, it is contended that the Family Court ought to have allowed the application filed under Order 7 Rule 11 of Civil Procedure Code and rejected the main O.P.

5.We are not impressed upon the contention raised by the appellant. A perusal of the averments made in present O.P in H.M.O.P.No.56 of 2017 would show that the same was not filed on the very same set of facts and cause of action as projected in earlier H.M.O.P.No.202 of 2009. On the other hand, a perusal of the facts and circumstances narrated in the present O.P., more particularly, at Paragraph Nos.9 and 10,would undoubtedly indicate that the present petition was filed based on certain allegations made against the respondent pursuant to certain events said to have taken place on 11.03.2016, 16.03.2016 and 07.04.2017. Admittedly, those events alleged to have taken place are the events not covered under the earlier O.P, which was filed in the year 2009 and dismissed as early as on 07.02.2012. Therefore, it is evident that based on fresh set of facts and different cause of action, the present application is filed by the husband. Whether the husband is entitled to succeed or not based on such allegation is totally a different matter for the Family Court to consider and decide on merits, after hearing both sides. Hence, We do not find any reason for interfering with the order of the Trial Court in dismissing the application filed under Order 7 Rule 11 of Civil Procedure Code. Accordingly the Civil Miscellaneous Appeal fails and thus, the same is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Judge,
Family Court,
Srivilliputhur,
Virudhunagar District.

+ 1 CC TO Mr.M.SATHIAMOORTHY, ADVOCATE IN SR No. 70034

VSN

TE/SB/SAR-4 : 10/07/2018 : 2P/3C