



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) No.2078 of 2018

and

C.M.P. (MD) No.9191 of 2018

J.Angel Shiny

...Petitioner / Petitioner / Respondent

/Vs./

Pushpam Inigo

...Respondent / Respondent / Petitioner

Prayer: Civil Revision Petition - filed under Article 227 of the Constitution of India, to set aside the petition and order dated 10.09.2018 passed in I.A.No.414 of 2017 in DOP.No.71 of 2017 on the file of the Principal District Judge, Thoothukudi.

For Petitioner: Mr.G.Prabhu Rajadurai

For Respondent: Mr.A.W.D.Tilak

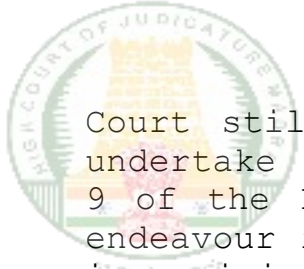
ORDER

The revision petitioner herein got married to the respondent herein on 25.05.2013. A female child has been born to the revision petitioner during the said wedlock. The respondent has filed DOP.No.71 of 2017 before the Principal District Judge, Thoothukudi, for dissolving the marriage. The revision petitioner herein has filed her counter in the main petition. A reply has also been filed. Trial has just commenced. At this stage, the present civil revision petition has been filed before this Court raising two concerns.

2. The first one is that the Court below must undertake a conciliation exercise between the parties. The second one is that the application filed by the revision petitioner under Section 36 of the Divorce Act, 1869, must first to be disposed of.

3. Heard the learned counsel on either side.

1. Even though the divorce petition is pending only before the Principal District Court, Thoothukudi, which is not a Family



Court still, it is incumbent on the part of the trial Judge to undertake the conciliation exercise between the parties. Section 9 of the Family Court Act, 1984, calls upon the Court to make endeavour in the first instance to assist and persuade the parties in arriving at a settlement. Order 32A Rule 3 CPC also imposes a duty on the Court to do, likewise, Order 32A Rule 3(1) CPC and Section 9(1) of the Family Court Act, 1984, are also almost parimateria. Therefore, the learned District Judge, who is hearing the divorce petition under the Divorce Act, 1869, is definitely under an obligation to embark upon the conciliation exercise. This duty cannot be abdicated or shirked. Therefore, I call upon the learned Principal District Judge to carry out the aforesaid exercise.

5. Section 36 of the Divorce Act, 1869 reads as under:

"36. Alimony pendente lite - In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, [the wife may present a petition for expenses of the proceedings and alimony pending the suit].

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband [for payment to the wife of the expenses of the proceedings and alimony pending the suit] as it may deem just:

provided that the petition for the expenses of the proceedings and alimony pending the suit, shall, as far as possible, be disposed of within sixty days of service of such petition on the husband."

6. In this case, I.A.No.414 of 2017 has been filed by the revision petitioner herein. The Court below is bound to dispose of the same on merits and in accordance with law, after hearing both parties.

7. It is also to be noted that the respondent, who filed DOP, must honour the order that is passed in terms of Section 36 of the Divorce Act, 1869, and only then, he can be allowed to get along with the main petition. Without carrying out the aforesaid exercise, the trial cannot obviously commence.

8. It is made clear that this Court has not pronounced on the merits of the matter and all the issues are entirely open.



9. With these observations and directions, the civil revision petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS-IV)

To

The Principal District Judge, Thoothukudi.

+ 1 CC TO MR.G.PRABHU RAJADURAI , ADVOCATE IN SR NO.86125

+ 1 CC TO MR.A.W.D.TILAK, ADVOCATE IN SR NO.86582

SM

BU/SKN/SAR-IV :09.11.2018 : 3P/4C

Order made in
C.R.P. (MD) (PD) No.2078 of 2018
20.09.2018