



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:05.06.2018

CORAM :

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD)No.1249 of 2013 (NPD)

and

M.P. (MD)No.1 of 2013

R.Balasubramanian

... Petitioner/Petitioner/Petitioner

Vs.

S.Nambi

... Respondent/Respondent/Respondent

PRAYER: Petition filed under Section 227 of Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.35 of 2012 in H.M.O.P.No.64 of 2011, dated 15.03.2013 on the file of the Sub-Court, Valliyoor by allowing the Civil Revision Petition.

For Petitioner : Mr.H.Arumugam

For Respondent : Mr.P.Subbiah

ORDER

This Civil Revision Petition is filed by the husband, challenging the order of the Sub Court, Valliyoor dismissing the petition filed by the husband to receive the reply statement in response to the rejoinder filed by the respondent/wife.

2.The brief facts that are necessary for the purpose of disposal of the Civil Revision Petition are as follows:

The revision petitioner filed a petition in H.M.O.P.No.64 of 2011 on the file of the Sub Court, Valliyoor. Though the said petition was filed in 2008 as H.M.O.P.No.84 of 2009 before Sub-Court, Tambaram, later, it was transferred to the Sub Court, Valliyoor and re-numbered as H.M.O.P.No.64 of 2011. The petition filed by the husband is against his wife/respondent herein for divorce on the ground of desertion. During pendency of the proceedings, it is stated that the respondent's father has admitted that the respondent was suffering from schizophrenia and that the respondent was taking treatment for the said mental disorder. The lower Court dismissed the said petition only on the ground that the petitioner has come forward with a new case as if the respondent has suppressed the material fact regarding her mental illness but failed to establish.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel for the respondent stated that in the main petition for divorce is only on the ground of desertion



under Section 13(1)(1b) of the Hindu Marriage Act and that therefore, the petition to receive the reply statement raising few allegations which are not relevant to prove desertion cannot be permitted.

4. Having regard to the nature of plea that is raised by the husband in this case, this Court is of the view that the petitioner seeking permission to file a reply statement cannot be rejected merely on the ground that the allegations are not proved. Since the husband has also stated in the reply about his wife's mental disorder before filing the petition, the lower Court observed that the husband who failed to seek divorce on the ground of wife's mental disorder cannot be permitted to introduce new ground for divorce.

5. Though the defendant is not entitled to file a reply statement or further pleading which is intended to substitute a plea which is raised in the original petition, a plea on the basis of subsequent event can be entertained. However, in this case, the plea that is raised in the reply statement is not contrary or in variation of the plea that is found in the petition.

6. Secondly, the learned counsel for the revision petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **Malathi Ravi M.D. Vs. B.V. Ravi, M.D.** reported in (2014) 7 SCC 640. In paragraph 28 of the judgment, the Hon'ble Supreme Court has held as follows:

"28. The learned counsel for the appellant has urged with vehemence that when dissolution of marriage was sought on the ground of desertion alone, the issue of mental cruelty can neither be raised nor can be addressed to. Regard being had to the said submission, we are constrained to pose the question whether in a case of the present nature we should require the respondent husband to amend the petition and direct the learned Family Judge to consider the issue of mental cruelty or should we ignore the fetter of technicality and consider the pleadings and evidence brought on record as well as the subsequent facts which are incontrovertible so that the lis is put to rest. In our considered opinion the issue of mental cruelty should be addressed to by this court for the sake of doing complete justice. We think, it is the bounden duty of this Court to do so and not to leave the parties to fight the battle afresh after expiry of thirteen years of litigation. Dealing with the plea of mental cruelty which is perceptible from the material on record would not affect any substantive right of the appellant. It would be only condoning a minor technical aspect. Administration of justice provokes our judicial conscience that it is a fit case where the plenitude of power conferred on this Court under Article 142 deserves to be invoked, more so, when the ground is statutorily



permissible. By such exercise we are certain that it would neither be supplanting the substantive law nor would it be building a structure which does not exist. It would be logical to do so and illogical to refrain from doing so."

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7. Having regard to the judgment of the Hon'ble Supreme Court and the facts that are admitted before this Court, this Court is of the view that the pleading in the reply statement which is not contrary to the plea that was raised in the original petition but based on subsequent development giving room for additional ground for divorce cannot be rejected on the ground that the plea in the reply statement is not proved.

8. Secondly, the case of the petitioner with regard to the subsequent events has relevance and Court can permit an additional ground instead of driving the husband to file another petition. This Court finds that the trial Court has erroneously dismissed the petition without considering the facts pleaded by the parties in the original petition and counter especially no serious prejudice is likely to be caused to the respondent, if the husband is permitted to raise his plea based on subsequent events.

9. In the result, the Civil Revision Petition is allowed and the order passed by the Sub Judge, Valliyoor in I.A.No.35 of 2012 in H.M.O.P.No.64 of 2011, dated 15.03.2013 is set aside.

10. Having regard to the fact that the petition for divorce was filed in 2008 and later re-numbered in 2009, this Court is inclined to direct the lower Court to dispose of H.M.O.P.No.64 of 2011 within a time frame. As a result, the trial Court is directed to expedite the trial and dispose of H.M.O.P.No.64 of 2011 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge, Valliyoor.

+ 1 CC TO Mr.H.ARUMUGAM, ADVOCATE IN SR No. 67109

+ 1 CC TO Mr.P.SUBBIAH, ADVOCATE IN SR No. 67175

RMI

TE/JC/SAR-3 : 28/06/2018 : 3P/4C

C.R.P. (MD) No.1249 of 2013 (PD) and

M.P. (MD) No.1 of 2013

05.06.2018