

*** HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ C.R.P. No.836 of 2016

% 17.09.2016

Smt.R.Deepthi

...Petitioner

VERSUS

\$ Mr.R.Vijay Kumar

...RESPONDENT

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri V.Sai Kumar

^Counsel for Respondent : Sri K.S.Murthy

? Cases referred

¹ 2012 LS (Madras) 1768



HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.836 OF 2016

ORDER:

The Civil Revision Petition is filed against the order dated 07.10.2015 passed in I.A. No.356 of 2015 in O.S. No.325 of 2013 on the file of Family Judge Court at Secunderabad.

2) The petitioner is the wife of the respondent. The respondent herein filed F.C.O.P. No.325 of 2012 on the file of Family Court, Secunderabad under Section 13 (1) (ia) of Hindu Marriage Act, 1955 (for short 'the Act'). Their marriage was performed on 06.01.2013 whereas the divorce application filed was within five months after the said marriage. As per Section 14 of the Act, there is a bar to maintain unless the imputation to seek relief on the ground of any fraud in performing the marriage. In fact, it is also one of the grounds in the divorce application for annulment of the marriage, which is to say the prayers are alternative. It is not disputed that when such is the case only in the prayer in relation to the annulment may be sustainable but not in relation to the divorce because of the bar laid down under Section 14 of the Act. However, the revision petitioner placed reliance upon the expression of the Madras High Court in **G.Ganesh Babu vs A.P.Arthi¹**. After service of notice on the respondent-wife, she filed an application in I.A. No.356 of 2015 to reject the plaint as there is a legal bar to the very maintainability of the petition for the reliefs supra. The relief sought to reject the plaint invoking Order VII Rule 11 (d) C.P.C, the lower Court

¹ 2012 LS (Madras) 1768

dismissed the said application and impugning the same, the present revision is maintained.

3) Heard both sides at length. Perused the material on record.

4) No doubt, the scope of the application to reject the plaint or petition even by invoking Order VII Rule 11 (a to d), if any, leave about (e & f) read with Section 141 C.P.C is only from perusal of the plaint allegations on its face taken as true, if barred by law or no cause of action and non-payment of any willful default despite a direction or not duly fixed when the Court fee as the case may be. It is not a case of lack of cause of action but for barred by law as referred supra, so far as the relief for annulment of marriage when it requires to be filed within time. Whereas for the relief of divorce it has to be filed only after one year and for the two reliefs, if at all, to seek, leave about it is mandatory as contemplated by Section 14 of the Act. The principle laid down in G.Ganesh Babu supra, is not a direction to all the Courts within the jurisdiction of the High Court of Madras to follow the same in directing not to number such applications for divorce in transferring and application under Section 14 of the Act to be filed within one year but for to return to comply the statutory requirement.

5) Even taken the expression into consideration by now, it is more than one year after the date of marriage referred supra, and to cure the defect, the revision has to be allowed to the extent of directing the lower Court to return the said divorce petition with relief of annulment of marriage as filed within one year from the date of marriage and so far as the relief of divorce it is not

sustainable but for to the annulment, to represent the petition and to give a fresh liberty by virtue of this order, send summons to the respondent, who is revision petitioner herein including to the advocate on record in the lower Court for the Restitution of Conjugal rights application filed by her against the husband for their appearance and then to make any endeavour as contemplated by the provisions of the H.M Act and the Family Courts Act for possible reconciliation and to proceed according to law.

6) The request of revision petitioner is that to transfer after numbering the annulment petition and divorce petition, from the Family Court, Secunderabad to the Family Court, Hyderabad is premature to consider and left open to seek such remedy after numbering and appearance.

7) Accordingly and in the result, the revision is disposed of. No order as to costs.

8) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.17.09.2016

Note: L.R copy to be marked - yes
knl