

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.No.3547 of 2019 and C.M.P.No.23264 of 2019

Arul Kumar

... Petitioner

-Vs-

R.Suja

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to strike off the plaint in connection with proceeding in H.M.O.P.No.3 of 2018 on the file of the Subordinate Judge, Thiruvallur.

For Petitioner : Mr.T.Arul

O R D E R

This revision has been filed with a prayer to strike off the plaint in connection with the proceeding in H.M.O.P.No.3 of 2018 on the file of the Subordinate Judge, Thiruvallur.

2. Before the Court below, the respondent wife filed H.M.O.P.No.3 of 2018 for restitution of conjugal rights, wherein the present revision petitioner / husband was the respondent. For whatever reasons, if the revision petitioner / husband wants to strike off the O.P., necessary petition could have been filed before the Court below, by invoking the concerned provision under the C.P.C.. However, without exhausting the available remedy, the revision petitioner husband has straight away approached this Court by filing the present revision petition, invoking the superintending powers of this Court under Article 227 of the Constitution of India.

3. In this context, the latest judgment of the Supreme Court reported in 2019 (5) C.T.C.696 (Virudhunagar Hindu Nadargal Dharma Paribala Sabai and Others -Vs- Tuticorin Educational Society and Others" can very well be pressed into service. In the said judgment, their Lordships have held as follows.

" 13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative

remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasijudicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in Surya Dev Rai vs. Ram Chander Rai², pointed out in Radhey Shyam Vs. Chhabi Nath that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

5. In view of the law already settled, this Court is not inclined to entertain this Civil Revision Petition and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

6. However, the dismissal of this Civil Revision Petition will not preclude the revision petitioner / husband to approach the Court below by filing appropriate petition for the relief sought for herein in the manner known to law.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

KST

To

The Subordinate Judge, Thiruvallur.

C.R.P. No.3547 of 2019

GP (CO)
CB (09/12/2019)



WEB COPY