

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2019

CORAM :

THE HON'BLE MS. JUSTICE P.T.ASHA

C.R.P. (NPD) No.668 of 2019

and

C.M.P. No.4409 of 2019

R.Selvadatchanamoorthy

... Revision Petitioner

Vs.

Shalini Gupta

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside docket order passed on 24.01.2019 by the learned Family Court Judge at Pondicherry in I.A.SR No.110 of 2019 in M.O.P.No.357 of 2015.

For Petitioner

: Mr.P.Sankaranarayanan

ORDER

The above revision petition has been filed, challenging the order of the Family Court Judge, Pondicherry, returning the application filed by the revision petitioner/husband, seeking stay of the proceedings in M.O.P. No.357 of 2015 pending on the file of the Family Court, Pondicherry, till the disposal of the C.M.A. No.3 of 2018 on the file of the Principal District Court, Cuddalore, as "not maintainable".

2.The brief facts which are necessary for disposal of this Civil Revision

Petition are as follows :

3.The revision petitioner/husband had filed H.M.O.P. No.40 of 2013 on the file of the Principal Sub Judge, Cuddalore, for dissolution of the marriage between him and the respondent/wife. By an order dated 19.01.2017, the said petition was allowed.

4.Challenging the same, the respondent/wife filed C.M.A.No.3 of 2018 on the file of the Principal District Court, Cuddalore. Meanwhile, the respondent/wife had filed M.O.P. No.357 of 2015 on the file of the Family Court, Pondicherry, for restitution of conjugal rights.

5.The order in C.M.A.No.3 of 2018 would have a direct bearing on the proceedings in M.O.P. No.357 of 2015. For the said reason, the revision petitioner/husband had taken out the impugned application under Section 10 of the Code of Civil Procedure.

6.It is seen from the records that, at the outset, the learned Judge, even without numbering the said application, has simply returned it with an endorsement "The petition is not maintainable". Challenging the said order, the revision petitioner is before this Court.

7.It is unfortunate that the learned Judge has not even cared to consider the fact that the decision in C.M.A. No. 3 of 2018 would have a direct bearing on the proceedings in M.O.P. No.357 of 2015 and therefore, invoking the provisions under Section 10 of the Code of Civil Procedure, the revision petitioner had filed the impugned application. The stay of the proceedings in M.O.P. No.357 of 2015 has been sought for, only to avoid conflicting decisions, if any, being passed.

8.The learned Judge ought to have numbered the application and passed a reasoned award, instead of returning the application at the threshold, stating that it is not maintainable. The docket order dated 24.01.2019 is therefore, set aside and the matter is remitted back to the Family Court, Pondicherry, to number the said application, issue notice to the respondent and pass orders thereon, after hearing the parties.

9.In the result, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

10.The original impugned application in I.A.SR.No.110 of 2019 in M.O.P. No.357 of 2015, has now been returned to the learned counsel for

P.T.ASHA, J.

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the revision petitioner, for which, he has made an endorsement in the petition to the effect that he has received the original impugned application.

Index : Yes / No
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Note : Issue order copy today, i.e. on 20.02.2019

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