

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On : 25.07.2018

Orders Pronounced On: 04.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.No.1247 of 2018

and

C.M.P.No.6375 of 2018

S.Saranya Devi ...Petitioner/Respondent

Vs

M.Rajesh @ Sridhar ...Respondent/Petitioner

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 03.01.2018 passed in I.A.No.1177 of 2017 in O.P.No.3800 of 2016 on the file of the III Additional Family Court at Chennai.

For Petitioner : Mr.G.R.M.Palaniappan

For Respondent : Mr.Rajkumar Paul
(No Appearance)

O R D E R

The revision petitioner is the wife and the respondent is her husband. The respondent filed the petition for Divorce under Section 12(1)(c) of the Hindu Marriage Act in O.P.No.3800 of 2016 before the III Additional Family Court at Chennai. During the pendency of the Divorce petition, the revision petitioner/wife filed an application in I.A.No. 1177 of 2017 under Order VII Rule 11(a) of CPC., to reject the petition in O.P.No.3800 of 2016. After giving an opportunity of hearing to both the parties, the learned III Additional Family Court Judge, Chennai dismissed the petition. Challenging the said order passed by the learned III Additional Judge, Family Court, Chennai the revision petitioner/wife has preferred the present revision before this Court.

2 According to the respondent herein, the petitioner and the respondent got married on 19.02.2016 at Jaya Sree Thirumana Mandapam, Kalakshethra Road, Tiruvanmiyur, Chennai. After marriage, the petitioner and the respondent lived together in the respondent's house for 10 days and the Matrimonial

relationship between them did not take place and out of the best efforts taken by the respondent/husband, the revision petitioner did not co-operate to consummate the marriage. The marriage has not been consummated on the sole reason of refusal by the revision petitioner/wife. The respondent/husband filed a petition for Divorce under Section 12(1)(c) of the Hindu Marriage Act in O.P.No.3800 of 2016.

3 According to the revision petitioner/wife the respondent/husband has filed a petition on false grounds by invoking Section 12(1)(c) and the same is not maintainable. There is no cause of action. Therefore, she filed an application before the III Additional Family Court, under Order VII rule 11 (a) of CPC to reject the petition. The learned Judge failed to consider the averments made in the petition and the stand taken by the revision petitioner and the Interlocutory Application, was dismissed, which warrants interference by this Court.

4 Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

5 Admittedly, the marriage between the petitioner and the respondent was solemnized on 19.02.2016 at Jayashree Thirumana Mandapam, Kalakshethra Road, Tiruvanmiyur, Chennai. Subsequently, the respondent/husband filed the petition in O.P.No.3800 of 2016 for Divorce. During the pendency, of the O.P.No,3800 of 2016, the revision petitioner/wife filed an application in I.A.No. 1177 of 2017 under Order VII rule 11(a) for rejection of Divorce petition in O.P.No.3800 of 2016. The Divorce petition filed by the respondent/husband was on the reason there is no cause of action, and the husband has invoked the wrong provisions of law, since the marriage between the parties is admitted. So, according to the respondent/husband, the petitioner/wife has not co-operated for the sexual relationship with him and also refused to access and the marriage was not consummated. Therefore, the respondent/husband seeks Divorce from his wife.

6 On a reading of the impugned order passed by the learned Family Court Judge, and on a reading of the Divorce petition in O.P.No.3800 of 2016, it is seen that there is no cause of action for filing the petition for Divorce and the wrong quoting of the provisions of law, cannot be the sole ground to reject the petition filed by the husband before the Court below.

7 On a reading of the petition for Divorce filed by the husband, it is clear that the marriage took place at Jaya Sree Thirumana Mandapam, Kalakshethra Road, Tiruvanmiyur, Chennai, and subsequently the marriage has not been consummated. But the

revision petitioner/wife was not co operating to access for sexual relationship. Therefore, the petition filed by the wife was rejected.

8 It is well settled proposition of law that while deciding the petition under Order VII Rule 11(a) of CPC for rejection of the plaint or petition, the Court has to see the averment made in the petition and documents filed by the plaintiff or petitioner and not the defence taken by the defendant or respondent and documents filed by the defendant or respondent.

9 Therefore, in this case, from the averment made in the petition filed by the husband for Divorce in O.P.No.3800 of 2016, it reveals that there is cause of action and therefore, whether the cause of action stated by the husband is true or not, has to be decided only after letting in evidence during the enquiry and not at this stage.

10 Therefore, under these circumstances, this Court does not find any merit in the revision and the revision is liable to be dismissed.

11 In the result, the present Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

sbn

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
The III Additional Family Judge,
Chennai.

+1cc to Mr.G.RM.Palaniappan, Advocate, SR.No.45040

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Kak(15/07/2019)