

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.(PD) No.3684 of 2019
and C.M.P.24221 of 2019

R.Devanathan

... Petitioner

-Vs-

S.Nandhini

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to struck off the proceedings in F.C.O.P.No.178 of 2019 on the file of Honourable Family Court, Erode and quash the same.

For Petitioner : Mr.G.Muthukumar

ORDER

This revision petition has been filed to strike off the proceedings in F.C.O.P.No.178 of 2019 on the file of Honourable Family Court, Erode and quash the same.

2. Heard the learned counsel appearing for the petitioner and perused the materials placed on record.

3. Whatever be the reason to seek for a direction to strike off the O.P. Proceedings, the said prayer can very well be urged by the petitioner before the Court below itself by filing appropriate application under Order VII Rule 11 of C.P.C.,

and without exhausting the said remedy, the petitioner has straight away approached this Court invoking Article 227 of the Constitution of India. This Court is not inclined to grant the prayer as has been sought for in view of the settled legal proposition by the Honourable Supreme Court of India.

4. 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. However, the revision petitioner / husband is given liberty to approach the Court below by filing appropriate petition to strike off the O.P., if he is advised to do so.

सत्यमेव जयते

Index : Yes / No
Internet : Yes / No
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To

The Family Court, Erode.

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R. SURESH KUMAR, J.

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