

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.No.3572 of 2019

1.M.M.Devmanoj

2.P.Pradeepa

... Petitioners/Petitioners

-Vs-

NIL

... Respondent/Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 23.09.2019 passed in I.A.No.2 of 2019 in H.M.O.P.No.72 of 2019 on the file of Subordinate Court, Mettupalayam.

For Petitioner : Ms.S.Akila
for M/s.Sarvabhauman Associates

O R D E R

In this revision, both the husband and wife, who filed the petition for dissolution of the marriage under Section 13 (B) of the Hindu Marriage Act, had requested the Court below to waive off the six months cooling period, which was negated by the present impugned order in I.A.No.2 of 2019 in H.M.O.P.No.72 of 2019 on the file of the Subordinate Judge, Mettupalayam.

2. Ms.S.Akila, learned counsel appearing for the parties relied on the decision of the Honourable Supreme Court in "Amardeep Singh -Vs- Harveen Kaur" reported in (2017) 8 S.C.C.746 .

3. I have gone through the said judgment and perused the materials placed before this Court.

4. No doubt, the Honourable Apex Court, in the said judgment, has held that six months cooling period is not mandatory but it is only directory. In that view of the matter, it is for the Court to take a decision by exercising discretion where a particular case deserves to be given waiving off the cooling period. In this context, at paragraph No.19 of the said judgment, the Honourable Apex Court held as follows.

"19. Applying the above to the present situation, we are of the view that where the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:-

- (i) the statutory period of six months specified in Section 13-B(2) in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;
- (ii) all efforts for mediation / conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;
- (iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;
- (iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned."

5. Here, in the case in hand, admittedly these parties i.e., the husband and wife, after having filed the H.M.O.P., had not been driven to Mediation Centre to explore the possibility of mediation and conciliation towards the reunion and since that is one of the main ingredients to be exhausted to the satisfaction of the Court below to exercise the jurisdiction to waive the cooling period, this Court feels that the parties can be relegated to the Mediation Centre to explore that possibility.

6. In that view of the matter, I am inclined to refer the matter to mediation. The parties shall appear before the District Mediation and Conciliation Centre attached to the District Court at Nilgiris. A direction is hereby given to the District Judge, Nilgiris to refer the issue for mediation and after the mediation report is obtained, then a particular time may be stipulated in this regard to the Court below to act upon as per the request of the parties, to exercise its discretion towards waiving off the mandatory cooling period.

7. With the above observations and directions, this Civil Revision Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KST

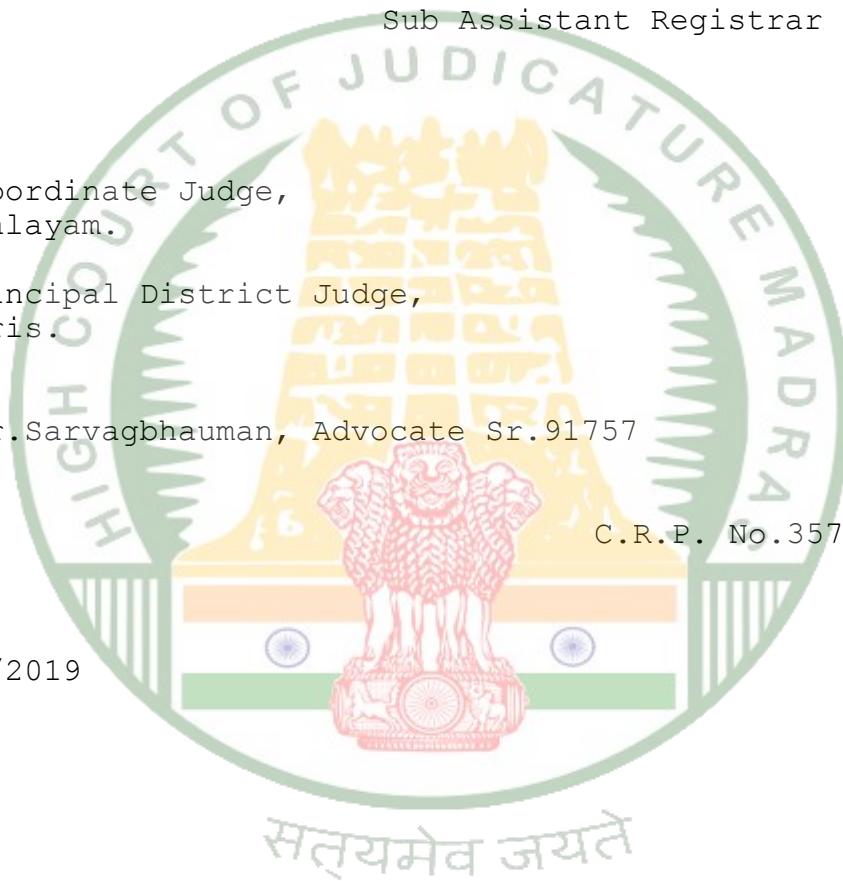
To

1. The Subordinate Judge,
Mettupalayam.
2. The Principal District Judge,
Nilgiris.

+2cc to Mr.Sarvagbhauman, Advocate Sr.91757

C.R.P. No.3572 of 2019

sai[co]
srg 14/11/2019



WEB COPY