

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(PD).No.4215 of 2019

G.Kalaivani

...Petitioner

Vs

K.C.Gopalakrishnan.

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the Fair and decreetal order dated 17.10.2019 made in I.A.No.2 of 2019 in H.M.O.P.No.1 of 2016 on the file of the Subordinate Judge, Perundurai by allowing the present Revision Petition.

For Petitioner : Mr.R.Shase

For Respondent : Mr.T.Gowthaman

ORDER

This Civil Revision Petition has been filed to set aside the order order dated 17.10.2019 made in I.A.No.2 of 2019 in H.M.O.P.No.1 of 2016 on the file of the Subordinate Judge, Perundurai.

2.The Revision petitioner is respondent (wife) and respondent is the petitioner (Husband) in H.M.O.P.No.1 of 2016 dated 17.10.2019 on the file of the Subordinate Judge, Perundurai. The respondent herein filed the petition against the petitioner herein for relief of divorce. The marriage between the petitioner and the respondent held on 21.06.2004. The divorce petition was filed on the ground of cruelty and mental agony under Section 13(1)(ia) of the Hindu Marriage Act 1995. The case was posted for argument. At that stage, the revision petitioner filed I.A.No.2 of 2019 to amend the main petition and add one more ground under Section 13(1)(15) as the wife was suffered from Veneral disease. Hence, the petition filed.

3.The learned counsel for the petitioner/wife herein submitted that the Revision petitioner is wife and respondent is husband in the petition. The respondent's husband filed H.M.O.P.No.1 of 2016 against the revision petitioner's wife for relief of divorce. The marriage between the petitioner and the respondent held on 21.06.2004. The divorce petition was filed on the ground of cruelty and mental agony under Section 13(1)(ia). The case was posted for argument after recording evidence. At that stage revision petitioner filed I.A.No.2 of 2019 to amend the main petition and add one more ground under Section 13(1)(15) as the wife was suffering from Venereal disease. The petitioner/wife cross examined the husband's evidence and unable to let evidence on her behalf. The trial Court, without considering this fact of the case, allowed the petition on cost of Rs.2000/- which is unjust and unsustainable and thus pleaded to set aside the order of the trial Court and reiterated other grounds raised in the memo and allow the Revision Petition.

4.The learned counsel for the respondent supported the order of

the trial Court and further submitted that the petitioner was suffering from venereal disease has been pleaded but the provision under Section 13(1)(5) is not mentioned in the petition. Therefore, the petition filed to amend the main H.M.O.P.No.1 of 2016 on the file of the Subordinate Judge, Perundurai. The petition will be produced by amending this main petition and the petitioner is having a chance to refer the respondent's contention and pleaded to dismiss the Revision Petition.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. The Revision Petitioner is wife viz., Kalaivani and respondent is husband viz., Gopalakrishnan filed H.M.O.P.No.01 of 2016 dated 17.10.2019 on the file of the Subordinate Judge, Perundurai for divorce with regard to marriage held on 21.06.2019 between the parties. The divorce petition was filed under Section 13(1)(ia). I have gone through H.M.O.P

main petition in para No.4, it is pleaded about the suffering of respondent's wife for HIV positive. While, mentioning the provisions 13(1)(ia) alone mentioned Section 13(1)(5) was not mentioned. Admittedly, only after completion of evidence the husband filed this petition for amending the main petition. The trial Court has allowed the amendment on the ground that it will not change the nature and character of the case. The learned counsel for the petitioner while arguing the case contended that if amendment is permitted after closing the evidence, the petitioner/wife will loose her chance to cross examine the witness. In this aspect, and also let her chance to let evidence in this regard. Admittedly, the suffering of HIV positive by the petitioner/wife, is pleaded in the main petition in para no.4 only omission is provision in the main petition. Under these circumstances, the application filed for amendment is boanafide. As such, prejudice will not be caused to the petitioner/wife refusing the amendment would infact lead to injustice and lead to multiple litigation. Therefore, the order of the trial Court is legally sustainable. I find no merit in the Revision petition any how the trial Court

V.SIVAGNANAM.J,

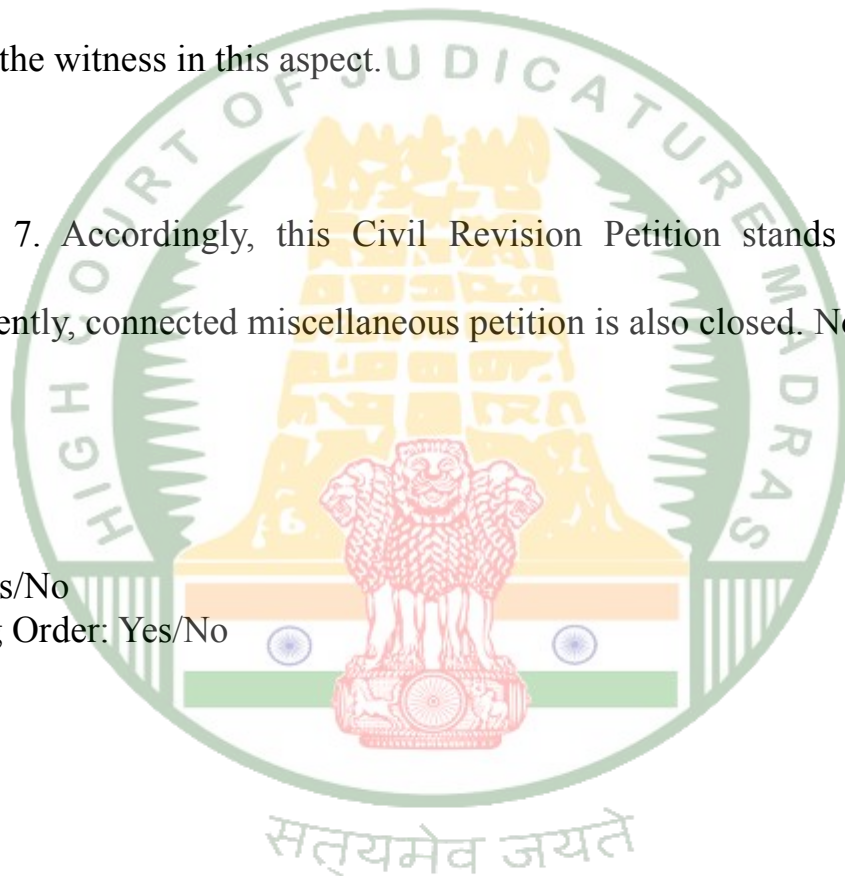
vsn

is directed to permit the Revision petitioner/wife to let evidence and cross examine the witness in this aspect.

7. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

11.12.2020

Index: Yes/No
Speaking Order: Yes/No
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