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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.34 of 2013

and

M.P.No.1 of 2013

Venkatesan

... Appellant/Appellant

Vs.

Anushuya

.. Respondent/Respondent

Prayer : Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act r/w u/s 100 of C.P.C., against the judgment and decree made in C.M.A.No.6 of 2012 on the file of the Principal District Judge, Thiruvvarur dated 15.03.2013 reversing the well considered judgment and decree made in O.S.No.66 of 2010 dated 06.01.2013 on the file of the Sub Court, Thiruvvarur.

For Appellant : Mr.K.Sakthivel

For Respondent : Mr.E.P.Senniyangiri

J U D G M E N T

The judgment and decree in C.M.A.No.6 of 2012 dated 15.03.2013 reversing the well considered judgment and decree made in H.M.O.P.No.66 of 2010 dated 06.01.2013, is under challenge in the present civil miscellaneous second appeal.

2. The respondent wife filed a petition in H.M.O.P.No.66 of 2010 before the Sub Court, Thiruvvarur, for restitution of conjugal rights. The marriage between the petitioner and the respondent was solemnized on 11.03.2001 as per the Hindu Rites and Customs. On account of difference of opinion, the appellant and the respondent were living separately for more than 11 years. The restitution petition filed by the wife was dismissed by the Sub Court, Thiruvvarur, on the ground that there is no possibility of reunion.



3. The findings of the first Appellate Court reveals that the appellant husband filed H.M.O.P.No.82 of 2010 for dissolution of marriage and the said divorce petition is still pending. When the divorce petition is filed by the husband, then there is no possibility of resumption of matrimonial home. The Trial Court found that it is unnecessary to grant an order of restitution. Accordingly, the petition was dismissed.

4. The respondent wife filed C.M.A.No.6 of 2012, before the District Court, Thiruvavur, challenging the said judgment of the Trial Court. The first Appellate Court reversed the judgment and granted the relief of restitution of conjugal rights on the ground that the divorce petition is pending and therefore, the wife is entitled for the relief of restitution of conjugal rights.

5. This Court is of the considered opinion that the marriage between the appellant and the respondent became irretrievably broken down. They were living separately for more than 11 years. The divorce petition filed by the husband is still pending. The restitution of conjugal rights as ordered by the first Appellate Court on 15.03.2013 was not given effect to by the parties concerned. If the restitution is ordered, such restitution is not honoured by the spouses, then the Court cannot compel for such restitution, but, such an order of restitution may be taken as an acceptable ground for grant of dissolution of marriage. This being the principles, now the findings of both Courts need not be considered at length, in view of the fact that the spouses are living separately for more than 11 years and further, the divorce petition is pending enquiry.

6. Thus, without going into the merits of the matter, this Court is of the considered opinion that the order of restitution granted by the first Appellate Court has not been honoured by the respective parties. This apart, the divorce petition is also filed and it is pending. Under these circumstances, the order of restitution passed by the first Appellate Court is not implemented and therefore, it lost its relevancy as far as matrimonial life of the appellant and the respondent are concerned. When the decree of restitution lost its relevancy and significance and not honouring the decree of restitution is also a ground for divorce. It is for the parties to adjudicate all the issues in divorce petition which is already pending before the competent Court of law.

7. Thus, this Court is of the considered opinion that the issues raised in the present second appeal lost its relevancy and therefore, no further orders are required as the decree of restitution was not honoured by the parties concerned.



Accordingly, C.M.S.A.No.34 of 2013 stands disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Principal District Judge,
Thiruvarur.
2. The Sub Judge,
Thiruvarur.

Copy to:

The Section Officer,
V.R.Section,
High Court, Chennai-104.

+1cc to Mr.K.Sakthivel, Advocate, S.R.No.7024

C.M.S.A.No.34 of 2013
and
M.P.No.1 of 2013

PVS (CO)
SU(01/10/2021)