

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD)No.464 of 2021

S.Ramkumar

...Petitioner

Vs

B.Balasaranya

...Respondent

PRAAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the docket order passed in H.M.O.P.Sr.No.3788 of 2020 dated 19.02.2021 on the file of the Principal Family Court, Chennai by allowing the present petition and to direct the Principal Family Court to number the OP and dispose of the same on merits.

For Petitioner : Mr.G.Nagarajan

ORDER

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The order dated 19.02.2021, passed by the learned principal Judge, Family Court, Chennai, in un-numbered H.M.O.P.SR.No.3788/2020 is under challenge in this Civil Revision Petition.

2. The petitioner had filed a petition under Section 12(1)(c) r/w

13(1) (i) (a) of the Hindu Marriage Act 1955, seeking the following reliefs:

(a) Pass a decree by declaring the marriage held on 01.11.2019 between the petitioner and the respondent at P.K.mahal, Medical College Road, Eswari Nagar, Thanjavur as Null and Void on the ground of non-consummated of the marriage.

Or in alternative

(b) Pass a decree of divorce declaring that the marriage held on 01.11.2019 between the petitioner and the respondent at P.K.Mahal, Medical College Road, Eswari nagar, Thanjavur, to be dissolved with effect from the date of decree of divorce on the ground of cruelty.

3. The learned counsel for the petitioner would submit that the petitioner and the respondent were husband and wife. Their marriage was solemnized on 01.11.2019 as per Hindu traditions and customs at P.K.Mahal at Thanjavur and the local reception took place at Sree Vaibhavam Banquet Hall, Anna Nagar, Chennai, on 06.11.2019. After marriage, they stayed in Jawahar Nagar, which is within the jurisdiction of the Court below and on nuptial night, the respondent said that she was

not willing to be in physical relationship for sometime as she cannot get over the issue during her birthday and the respondent made arguments with her. On 22.07.2020, the respondent left from matrimonial home and two days prior to Diwali, the petitioner called the respondent in which the old issues arose and ended in arguments and refused to return back to matrimonial home and till date, the marriage was not consummated and so on. Therefore, the learned counsel for the petitioner prays to allow this petition.

4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. On going through the submissions made by the learned counsel for the petitioner, this Court is of the view that Divorce can be filed on any of the ground stated in the Hindu Marriage Act. According to the petitioner herein, it is under the provisions of Section 12(1)(c) of the Hindu Marriage Act, seeking for annulment of the marriage on the ground that there was no consummated of marriage and the provisions of Section 13(1)(ia) of the Hindu Marriage Act seeking divorce on the

grounds of cruelty (i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; (ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. The cruelty has to be decided by the Court below and the marriage has not been viewed to the un-consummation of the marriage. In this case, the petitioner herein sought for two prayers and it is for the Court below to consider the same at the time of deciding the issue.

6. The Court below has returned the said O.P., without even numbering and rejected the same and returned it for representation. When the petitioner pleads that every relief of divorce sought as not correct and both the petitioner and the respondent filed a petition seeking for both the prayers, the Court below has to accept the same and number the petition and then proceed further on merits. The Court cannot rebut the same at the threshold, when the matter has to be decided only on facts and evidences that has to be let in by the parties.

7. Hence, there shall be a direction to the learned Principal Judge,

Family Court, Chennai to number the the O.P., and proceed further in accordance with law.

8. Accordingly, this civil revision petition stands disposed of . No costs.

09.03.2021

Index:Yes/No
Speaking order/Non Speaking order
sbn

To

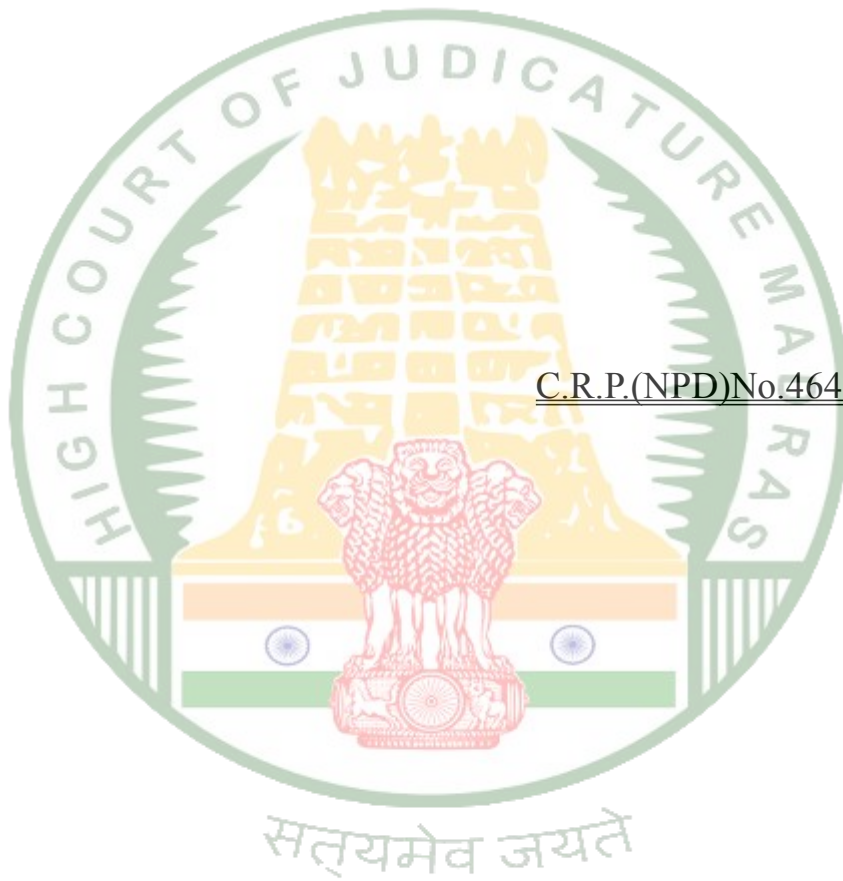
The Principal Family Court,
Chennai.



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V.BHAVANI SUBBAROYAN, J.

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