



C.R.P.(P.D).No.920 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(P.D) No.920 of 2020
and C.M.P.No.4869 of 2020**

R.Radhika

...Petitioner

Vs.

G.Ramesh Babu

...Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in O.P.No.3980 of 2019 dated 11.02.2020 on the file of the Hon'ble Principal Judge Family Court, Chennai by allowing the Civil Revision Petition.

For Petitioner : Mr.M.Vijayakumar
For Respondent : Mr.J.Saravanel

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.1 of 2019 in O.P.No.3980 of 2019 on 11.02.2020 by the learned Principal Judge, Family Court, Chennai.



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2.Before considering the reliefs claimed and order passed in I.A.No.1 of 2019, it is necessary to appraise the facts leading to filing of this petition. I.A.No.1 of 2019 was filed by petitioner herein to eschew the counter claim filed by her in H.M.O.P.No.3980 of 2019 (H.M.O.P.No.254 of 2013) accepting the fresh counter. H.M.O.P.No.3980 of 2019 was originally filed before the Subordinate Court, Tambaram as H.M.O.P.No.254 of 2013 by the respondent against the petitioner under Section 13(1) (1-A) of Hindu Marriages Act. In this petition, petitioner filed counter refuting the allegations made in the divorce petition and made a counter claim. The prayer in the counter is that,

“It is therefore prayed that this Hon'ble Court may be pleased to grant a judgment and decree,

i)dismissing the H.M.O.P.No.254 of 2013,

ii)granting divorce to the respondent by allowing this counter claim under the grounds of cruelty,

iii)directing the petitioner to pay Rs.1,00,00,000 (One Crore) towards permanent alimony to the respondent and

iv)to pass any other order as this Hon'ble Court may deem fit and proper”.



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3. Then petitioner filed I.A.No.13 of 2019 for amending the counter especially for deleting paragraph No.18 and its entire prayer. This petition was opposed by the respondent. On considering the rival submissions, the learned Subordinate Judge, Tambaram, dismissed the amendment petition filed by the petitioner. Challenging the dismissal amendment petition, petitioner filed C.R.P.(P.D).No. 545 of 2019. C.R.P.(P.D).No. 545 of 2019 was allowed giving permission to delete paragraph No.18 with its prayer and a direction was given for disposing the H.M.O.P.No.254 of 2013 within a period of two months from the date of receipt of a copy of this order to the learned Subordinate Judge, Tambaram. After disposal of C.R.P.(P.D).No. 545 of 2019, petitioner filed transfer C.M.P.No.170 of 2019 for transferring H.M.O.P.No.254 of 2013 from the Sub-Court, Tambaram, to the Family Court, Chennai. This petition was allowed and H.M.O.P.No.254 of 2013 was transferred to the file of learned Principal Judge, Family Court, Chennai and re-numbered as H.M.O.P.No.3980 of 2019.

4. Thereafter, petitioner filed H.M.O.P.No.3490 of 2019 under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights. Respondent filed counter in this petition. Then, petitioner filed I.A.No.1 of



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2019 in H.M.O.P.No.3980 of 2019 under Section 151 of C.P.C., to eschew the counter claim made by the petitioner and accept the fresh counter in H.M.O.P.No.3980 of 2019. This petition was strongly opposed by the respondent. After considering the rival submissions, the learned Principal Judge, Family Court, Chennai has dismissed the petition. Against the said dismissal order, this Civil Revision Petition is preferred.

5.The learned counsel for the petitioner submitted that the counter in H.M.O.P.No.3980 of 2019 was filed when the petitioner was in a disturbed mood. Therefore, certain allegations were made against the respondent. The petitioner's primary object now is to return to the matrimonial home and start a fresh life with respondent. There is a daughter and, atleast for her sake, petitioner wants to live with the respondent. To show her bonafide, she also filed petition for restitution of conjugal rights. If the allegations made in the counter are allowed to stay it would be a hindrance for resuming the matrimonial life with the respondent. Therefore, this petition was filed. Without considering the merits of the petitioner's claim, the learned Principal Judge, Family Court, Chennai, dismissed the petition. Thus, she prayed for setting aside the order of the learned Principal Judge, Family Court, Chennai and for allowing this Civil Revision Petition.



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6.In response, the learned counsel for the respondent submitted that in I.A.No.13 of 2019, petitioner's prayer was only to delete paragraph No.18 and its entire prayer. Though that prayer was not favourably considered by the learned Subordinate Judge, Tambaram, in Revision, this Court permitted the petitioner to delete paragraph No.18 as prayed by her. Respondent's evidence in divorce petition was already over and when the case was posted for examining the witnesses on the side of the petitioner, this petition is filed. If this petition is allowed it would change the entire nature and course of the proceedings. It was specifically directed in transfer C.M.P.No.170 of 2019 that the proceedings should be continued from the stage where it was left when the matter was pending on the file of the learned Subordinate Judge, Tambaram.

7.It is submitted by the learned counsel for the petitioner that the petitioner filed a petition to recall PW1 and that petition was allowed. The learned counsel for the respondent by saying that the recall petition was allowed on respondent saying no objection for this petition. Even after allowing this petition, the petitioner has not chosen to give evidence.



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8.Be that as it may. The nature of the facts and circumstances of the case shows that in the divorce petition filed by the respondent, petitioner had filed detailed counter refuting the allegations and also made a counter claim for divorce. Subsequently, she withdrew the counter claim by filing the application for deleting paragraph No.18 and the prayer. She had also filed a petition for restitution of conjugal rights and transfer petition for transferring the case from the learned Subordinate Judge, Tambaram to Family Court, Chennai. The position now is that on the basis of the pleadings already available, the respondent had given evidence and the evidence of respondent is over. We cannot now set the clock back by permitting the petitioner to file a fresh counter making fresh allegations. It would change the entire nature and course of the proceedings and the trial so far conducted. If the petitioner really wants to resume matrimonial life with the respondent, she can explore the possibility of settlement by resorting to mediation or lok adalat. But at this stage, after recording of evidence extensively and when the case is pending from the year 2013, this Court cannot permit the petitioner to file a fresh counter in H.M.O.P.No.3980 of 2019. The learned Principal Judge, Family Court, Chennai has considered all these aspects and on the right perspective dismissed the petition. This Court finds there is no reason to interfere with the order dated



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11.02.2020, in I.A.No.1 of 2019 in O.P.No.3980 of 2019 passed by the learned Principal Judge, Family Court, Chennai and the order is confirmed.

9.Resultantly, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition stands closed.

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29.10.2021

Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No



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To

- 1.The Principal Judge,
Family Court,
Chennai
- 2.The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

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