

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.(PD) No.939 of 2021
and
C.M.P.No.7592 of 2021

Geetha Lakshmi

.. Petitioner/Respondent/Respondent

Vs

A.Manohar

.. Respondent/Petitioner/Petitioner

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Docket order passed in I.A.No.1 of 2021 in O.P.No.4539 of 2018 by the VI Additional Family Court, Chennai, dated 20.03.2021.

For Petitioner

..

Mr.C.Prakasam

For Caveator

..

Mr.R.Thangamani

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ORDER

Heard Mr.C.Prakasam, learned counsel for the petitioner and Mr.R.Thangamani, for the caveator on behalf of the respondent.

2.The revision petition has been filed by the respondent in O.P.No.4539 of 2018 which is now pending on the file of the VI Additional Family Court, Chennai. The said Original Petition had been filed by the respondent / husband on the ground of cruelty under Section 13(1)(ia) of Hindu Marriage Act, 1955, seeking dissolution of marriage.

3.The revision petitioner herein had entered appearance and had also filed a counter in the said petition. Thereafter, an affidavit and petition had been filed by the respondent herein, seeking to introduce various amendments. That was returned for compliances. Pending that, without returning the same, a further affidavit and petition was filed in the said Original Petition seeking again amendment of the petition filed. That was numbered as I.A.No.1 of 2021. Counter was not filed. Two opportunities had been granted. Thereafter, the learned VI Additional Family Court Judge, Chennai, had passed an order allowing the said application and the entire order is extracted below:-

“Counter not filed. Hence petition is allowed.”

4.I am deeply distressed with the nature of the order passed. The learned VI Additional Family Court Judge, Chennai, has a responsibility to both the parties to ensure that scurrilous matters are not introduced by way of an amendment. The learned VI Additional Family Court Judge, Chennai, had an occasion to examine the nature of allegations sought in the application seeking amendment. They are not only defamatory but down right, scurrilous.

5.The learned VI Additional Family Court Judge, Chennai, must also realize that though disputes are pending between the spouses in the Court, if there are children, then when the children grow, out of natural curiosity they would also be examining the various petitions filed in the court matters between their parents and if such scurrilous matters are presented before them, they would certainly get psychologically affected.

6.The responsibility of the learned Family Court Judge extends far beyond the petitioner / respondent and he or she is also responsible to examine the further effect which such scurrilous matters which are introduced in the way of pleadings would have on the children.

7.I am not able to reproduce the allegations which the respondent herein had introduced by way of an amendment. I am really depressed with the amendment. The said amendment was allowed. I really wonder whether the learned VI Additional Family Court Judge, Chennai, had actually read the contents.

8.As a matter of fact, the Hon'ble Supreme Court had given various directions with respect to the Family Court matters and with respect to the functioning of Family Courts.

9.Originally Order 32A of CPC was introduced by way of an amendment in the year 1976 to regulate proceedings with respect to family matters. That was found not to be sufficient and therefore, the Family Courts Act, 1984 was introduced to alleviate the distresses which sparring spouses face.

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10.But here is a typical example where the learned VI Additional Family Court Judge, Chennai, instead of dousing the flame had actually enhanced it and added fuel so that the differences between the parties can never be reconciled.

11.Introducing such an amendment without even affording adequate opportunity for filing counter, in my opinion, is totally unwarranted and there is a failure of duty which had been cast upon the Family Court Judge.

12.As a matter of fact, in ***Bhuwan Mohan Singh Vs. Meena and Others*** reported in **2015 6 SCC 353**, the Hon'ble Supreme Court albeit in a different context had examine the sensitiveness which a Family Court Judge should show towards the parties before them.

13.In the present case, the learned Judge appears to have thrown all such guidelines to the wind and had permitted an amendment without knowing the consequences.

14.The role of Family Courts had also been explained by the Hon'ble Supreme Court in ***K.A.Abdul Jaleel Vs. T.A.Shahida*** reported in **2003 4 SCC 166**, where again the duties and expectations were stated.

15.The manner in which the order under revision was passed clearly shows that the learned VI Additional Family Court Judge,

Chennai, had thrown all caution and guidelines to the wind and had proceeded further.

16.It is brought to my notice by the learned counsel for the caveator that there was an allied proceedings in Crl.R.C.No.1087 of 2019 and there was a direction by a learned Single Judge to dispose M.C.No.59 of 2019 which is also pending before the learned learned V Additional Family Court Judge, Chennai, within a period of three months.

17.But it must be remembered that it is the respondent herein who is at fault by dragging the matter even though he knows that there is a direction to complete the matter within a time bound manner. Filing of an particular application for amendment itself should have not been encouraged by the learned Judge.

18.The revision petitioner has stated on affidavit that the learned VI Additional Family Court Judge, Chennai, had directly called upon the respondent herein to represent the petition which had been returned earlier and had passed orders without affording sufficient opportunities to file counter.

19.I have no hesitation in setting aside the order now under revision in view of the fact that by way of the said amendment scurrilous matters have been introduced. It would only be appropriate that, if found to be false later, or not established, the respondent herein is put on terms in accordance with the concept of costs which has been established by the Hon'ble Supreme Court in *Maria Margarida Sequeira Fernandes and Others Vs. Erasmo Jack De Sequeria* reported in **2012 5 SCC 370**, wherein the Hon'ble Supreme Court, of course in a matter of grant of interim injunction, had directed that the plaintiff should be imposed with costs, so that if the defendant suffers by way of injunction their suffering could be alleviated to little extent.

20.Taking queue from the reasoning of the Hon'ble Supreme Court, I would direct the respondent herein to deposit a sum of Rs.50,000/- (Rupees Fifty Thousand Only) to the credit of O.P.No.4539 of 2018 within a period of the next two hearing dates in the said O.P.No.4539 of 2018. The learned Judge must ensure that the said costs of Rs.50,000/- are deposited to the credit of the said Original Petition. If the amendments sought to be introduced are found to be false or not established in manner know to law, such costs should be directed to be

paid to the revision petitioner herein, in addition to any other costs that may be imposed.

21. In view of the above observations, the Civil Revision Petition is allowed, with costs and the order under revision is set aside. Consequently, the connected Civil Miscellaneous Petition is closed. The matter is remitted back to the learned VI Additional Family Court Judge, Chennai, to decide the issue in accordance with law.

29.04.2021

Internet: Yes/No
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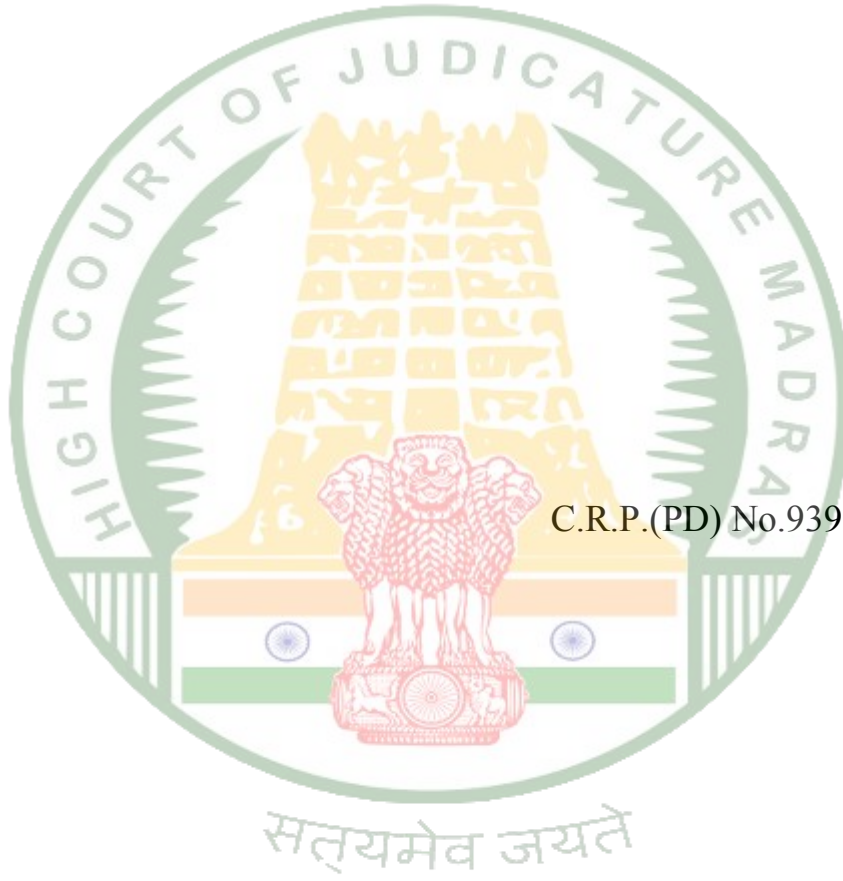
To:- The VI Additional Family Court, Chennai.

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C.V.KARTHIKEYAN,J.

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