

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.2848 of 2016
and
C.M.P. No. 14457 of 2016

M. Pandiyan ... Petitioner

Vs.

Tamilarasi ... Respondent

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India praying for to set aside the petition and Fair and Decreetal order dated 02.04.2016 made in I.A. No.9 of 2016 in H.M.O.P. No.20 of 2013 on the file of the Sub-Ordinate Court, Vaniyambadi, Vellore District.

For Petitioner ... Mr.G. Vinodh Kumar

For Respondent ... Mr.Prasanna

(For Sai, Bharath & Ilan)

ORDER

The Civil Revision Petition has been filed under Article 227 of the Constitution of India praying for to set aside the fair and decreetal order dated 02.04.2016 made in I.A. No.9 of 2016 in H.M.O.P. No.20 of 2013 on the file of the Sub-Ordinate Court, Vaniyambadi, Vellore District.

2. The case of the petitioner is that the petitioner herein being the husband, is the respondent in HMOP No.20 of 2013 on the file of the Sub-ordinate Judge, Vaniyambadi, which has been filed by his wife/respondent herein and the petitioner therein, praying for to dissolve the marriage solemnized on 16.11.1983 between the petitioner and the respondent at Lakshmi Saraswathi Marriage Hall in Vellore, as per Hindu rites and customs, due to misunderstanding and disputes between them. Out of the wedlock, they have a daughter aged about 34 years now. The petitioner/husband has filed Counter statement on the aforesaid main petition on 02.04.2014. Thereafter, the petitioner has filed I.A. No.9 of 2016 on its file for the amendment of last line mentioned at para No.3 in his counter in the main petition. The same was dismissed by order dated 02.04.2016 of the Court below for having failed to establish the pleadings of amendment submitted by the husband/petitioner herein as the averments in the counter have been made inadvertently. Being aggrieved, the present Civil Revision petition has been filed against the dismissal order of the Court below.

3. The learned counsel for the petitioner would submit that there is no negligence on the part of the petitioner in filing an application for amending of statement which has been made inadvertently in the last line of the 3rd page due to typographical error. If the application had been allowed, it would resolve the matrimonial issue between the petitioner and the respondent pending for long years. Without considering the above, the Court below has dismissed the Interim Application, thereby the remote chance of reunion has deprived of and leading to the continuity of separation between the parties is caused. It has further been submitted that when the proposed amendment does not change the nature of case and cause of action or other relief, even post-trial amendment could be allowed. The only amendment sought for is that to frame as there is possibility of re-union between the spouse instead of no possibility. While the petitioner herein is taking earnest steps for re-union with the respondent wife for peaceful life at-least in the remaining period, the same has been refuted by dismissal order of the Court below. Hence, the impugned order passed by the Court below is liable to be set aside.

4. The learned counsel for the respondent would submit that the respondent wife has filed petition for divorce on 21.03.2013 and the petitioner husband has also filed counter statement on 02.04.2014 wherein the petitioner husband has made allegations against the respondent wife and finally concluded that there is no possibility to live together with the respondent. Further, the trial has also commenced in the main petition. While being so, the petitioner cannot claim for amendment of the statement raised in the counter while the petitioner has not mentioned any positive statement anywhere and even in the reply notice as to the respondent wife to live together with his wife. Under such circumstances, the petitioner has sought for amendment of the statement made in the counter that is to have been stated as typographical error as there is possibility to live together with his wife instead of there is no possibility to live together with his wife. As it does not appear to be typographical error, the Court below has rightly come to the conclusion and dismissed the application for amendment of statement made in the counter after considering the facts and circumstances of the case. Hence, this petition is liable to be dismissed.

5. Heard, the learned counsel appearing for the petitioner and the respondent as well as perused the material available on record.

6. On a perusal of the record, it is seen that the HMOP No.20 of 2013 has been filed by the respondent-wife seeking for divorce in the year 2013 due to mental agony and sufferings sustained through the petitioner-husband. The case is being adjourned periodically on various dates and P.W1 has not been cross examined so far. In the counter statement of the petitioner-husband filed on 02.04.2014, after pointing out negative statements on the respondent-wife with regard to mental depression of his wife and others, nowhere has been mentioned about his bonafide-intention to live together with the respondent-wife in the counter, it has been finally stated that "MdhYk; jw;ngghja epiyg;ghl;oy; kDjhuUld; nru;e;J thGk; R{H;epiy vjpu;kDjhuUf;Fk; ,y;iy. i.e. but, there is no possibility to live together with the respondent wife. Further, as of now the petitioner- husband is aged about 58 years and the respondent-wife 51 years, the claim of the petitioner-husband cannot be considered as truth after living separately for more than 10 years leaving his wife alone with her parents. If the petitioner-husband really intends

to live with her wife, both should have cohabited by 10 years. Further, their daughter is living with the petitioner-husband who is aged now about 34 years to be married and not with the respondent-wife since the petitioner-husband has taken away his daughter from the respondent-wife leaving his wife alone in the residence of Parents in Law. Under these circumstances, the learned counsel for the petitioner submits hereby that the petitioner is willing to live with his wife and seeking for to amend the counter statement as "MdhYk; vjpu;kDjhUU; kDjhuUld; kDjhuUld; nru;e;J fztd;-kidtpahf thGk; R{H;epiy cs;sJ" ie. there is possibility to live together with his wife," instead of "MdhYk; jw;nghija epiyg;ghl;oy; kDjhuUld; nru;e;J thGk; R{H;epiy vjpu;kDjhuUf;Fk; ,y;iy." ie. there is no possibility to live together with his wife which cannot be considered as typographical error. While contra averments being made by the petitioner-husband in the counter against the respondent wife and living separately for more than 10 years without his wife/respondent herein and their daughter has been brought up by him without love and care of her mother and she is now in the age of Marriage having finished Engineering studies, how the petitioner can

affirm that there is possibility to live together with his wife. It may not be believable contention when the petitioner has not established his intention of cohabitation by way of oral and documentary evidence. While being so, at this time ie., after commencement of the Trial, the petitioner-husband has raised his willingness to live with his wife, it has to be considered that the petitioner-husband has made false statements and frivolous averments while the petitioner husband did not appear regularly before the Trial Court and not cross examined the P.W.1, and the same cannot be raised before the commencement of Trial. Moreover, as the petitioner-husband failed to establish his willingness before the commencement of Trial, it cannot be considered after the commencement of Trial in view of the aforesaid facts and circumstances of case. Hence it cannot be accepted and is liable to be set aside. Hence it seems that the petitioner is using of tactics in filing of such petitions to protract proceedings in the main petition and hence the submission made by the learned counsel for the petitioner cannot be accepted.

7. Having considered the aforesaid facts and circumstances of the case, this Court does not find any perversity in the order passed by the

Court below. As there is no evidence on the side of the petitioner to prove his bonafide-intention to live together with his wife/respondent herein, the Court below has rightly dismissed the application stating the proper reasons in its order and hence the Civil Revision petition is dismissed as devoid of merits. However, since the HMOP case is pending from the year 2013, the Court below is directed to proceed with the Trial on day to day basis and dispose of the case within a period of six months from the date of receipt of copy of this order.

8. In the result, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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25.02.2021

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Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

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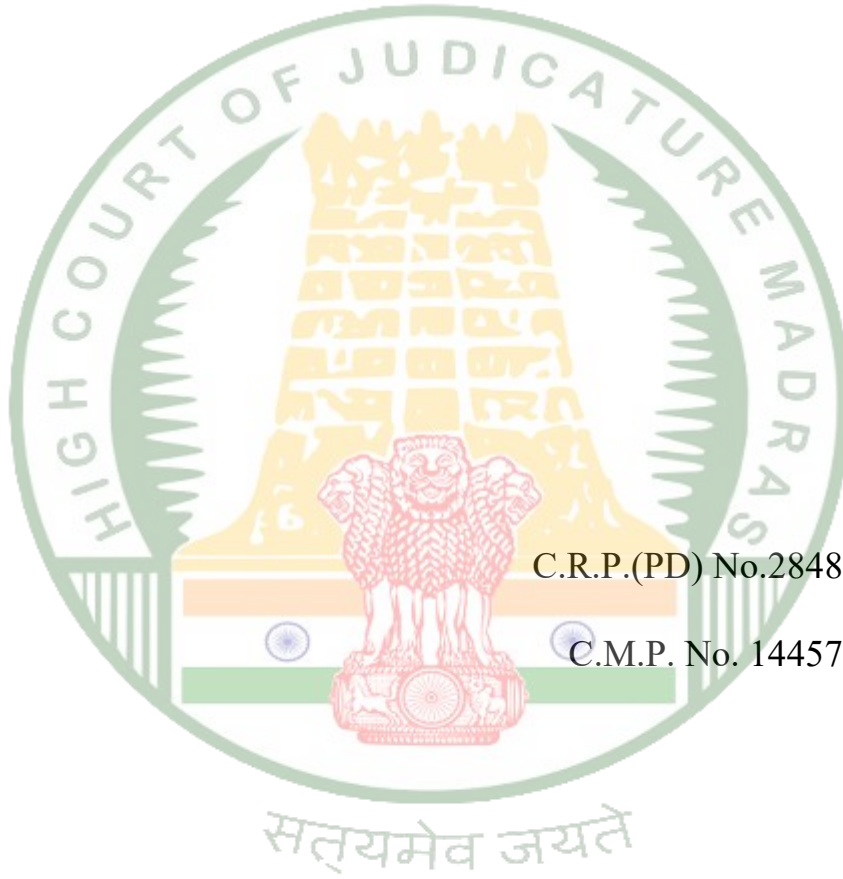
The Sub-Ordinate Court,
Vaniyambadi,
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