

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2021

PRONOUNCED ON : .10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(P.D) No.1121 of 2021

and

C.M.P.No.8715 of 2021

Deepika @ Diyanah

...Petitioner

Vs.

Wahed Hussain

...Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.03.2021 in F.C.I.A.No.06 of 2021 in F.C.O.S.No.02 of 2018 on the file of the Family Court at Chengalpattu and consequently allow the F.C.I.A.No.06 of 2021.

For Petitioner : Mr.M.Thangadurai

For Respondent : Mr.N.Sivaprakash

ORDER

This Civil Revision Petition is filed against the order passed in F.C.I.A.No.06 of 2021 in F.C.O.S.No.02 of 2018 on the file of the Family Court at Chengalpattu.

2.F.C.I.A.No.6 of 2021 in F.C.O.S.No.02 of 2018 was filed by the petitioner under Order 8 Rule 9 read with Section 151 C.P.C., for receiving additional written statement.

3.The learned counsel for the petitioner-wife submitted that the respondent-husband filed F.C.O.S.No.2 of 2018 against the petitioner seeking dissolution of the marriage solemnized between them in accordance with Islamic rites and rituals on 26.04.2010. The petitioner had already filed written statement. In written statement, certain important facts have been omitted to be mentioned. Therefore, the application in F.C.I.A.No.6 of 2021 in F.C.O.S.No.2 of 2018 for receiving additional written statement was filed. This petition was contested by the respondent. The learned Judge, Family Court, Chengalpattu, on considering the submissions made by the parties dismissed the petition on 29.03.2021. Against the dismissal order, this Civil Revision Petition is preferred.

4.The learned counsel for the petitioner submitted that the

petitioner does not want to give divorce to the respondent. She had filed a suit for restitution of conjugal rights with a view to join her husband. She has not filed a detailed written statement. Now, the respondent is vigorously pursuing the case. Therefore, the petitioner is now compelled to file an additional written statement incorporating all the necessary details. However, without considering the merits of the petitioner's case, the learned Judge, Family Court, Chengalpattu, dismissed the petition in F.C.I.A.No.6 of 2021 in F.C.O.S.No.2 of 2018. The counsel for the petitioner relied on the judgments reported in **2016 (4) CTC (Mad) 750, (Devendran Vs. P.V.Palani), 2017 (1) MWN (Civil) Mad 694 (V.R.Sundararajan Vs. D.Neelaveni), 2004 (4) CTC 759 (Mad) (T.R.Govindasamy Vs. T.R.Natarajan) & 2018 (3) MWN (Civil) 577 (Mad) (S.Swaminathan Vs. K.Esakkidoss)** for the proposition that, mainly because there is delay in filing additional written statement, the petition cannot be dismissed on technical grounds. The parties must be given opportunities to put forth their case.

5.In response, the learned counsel for the respondent submitted

that, in this case the oral evidence is completed and the case is pending for arguments. Now the petitioner wants to file a petition to receive additional written statement just to nullify the testimony of DW1 in her cross examination. Therefore, additional written statement cannot be received at this point of time. He relied on the judgments reported in **2021 SSC ONLINE Mad 2699 (D.Santhamani Vs. S.Vijayanandan)**, **2016 SCC ONLINE Mad 29255 (Thangammal Vs. Saraswathi)** and **2015 SCC ONLINE Mad 5116 (Chinnammal Vs. Prakash)**, for the preposition that additional written statement cannot be filed after the commencement of trial and a new plea is raised to altogether change the case.

6.The Reading of all these judgments shows that it is not as though additional written statement cannot be received. But if the pleadings in the additional written statement raise a new plea which was not raised earlier and that are not germane to the issue on hand, the defendant cannot be permitted to file additional written statement.

7.Whether the permission to file additional written statement can

be given or not depends on the facts and circumstances of the each case. Unlike the strict rules for amendment of plaint, the rules with regard to filing of subsequent pleadings under Order 8 Rule 9 of C.P.C., is flexible.

8.Order 8 Rule 9 of C.P.C., reads as follows:

“No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same”.

9.This rule makes it clear that with the leave of the court and upon such terms as the court thinks fit, the court may at any time require a written statement or additional written statement from any of the parties.

10.In the case before hand, the issue involved is dissolution of marriage between the petitioner and the respondent. Respondent-the

husband wants a dissolution of marriage; petitioner-the wife wants to avoid the dissolution of marriage. They have also a child.

11.It is submitted by the learned counsel for the petitioner that keeping the possibility of re-union mind, the written statement was not filed incorporating all the details. Therefore, the petitioner reserved a right to file additional written statement. As of now there is no possible chance of re-dissolution. Therefore, the petitioner has to contest the pleas of the respondent by raising appropriate pleadings which was omitted to be raised in the written statement. This kind of request cannot be normally entertained in a property dispute or other dispute. Considering the fact that, this is a dispute between husband and wife, the fact that the petitioner deliberately avoided raising certain issues in the written statement with the fond hope of reunion with their husband, this court is of the considered view that the petitioner may be permitted to file additional written statement.

12.There are contrary views expressed by the learned counsel for the parties with regard to the stage of the pendency. The petitioner's counsel

says that the case is pending for examination of witnesses on his side. The respondent's counsel says that the case is pending for arguments. None of them produced any authentic material to substantiate their case.

13.For the reasons aforesaid, this court set aside the order dated 29.03.2021, in F.C.I.A.No.06 of 2021 in F.C.O.S.No.02 of 2018 passed by the learned Judge, Family Court, Chengalpattu and allow the petition in F.C.I.A.No.06 of 2021 to receive additional written statement. On receipt of additional written statement, the learned Judge, Family Court, Chengalpattu, is directed to give opportunity to the respondent to file reply statement and proceed to dispose of the case on merits and in accordance with law.

14.Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

**C.R.P.(P.D) No.1121 of 2021
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G.CHANDRASEKHARAN.J,

Today, after pronouncing the order, the learned counsel for the respondent submitted that the case was pending for arguments. Therefore, he prays time for disposal of this case. In view of the submissions, the learned Judge, Family Court, Chengalpattu, is directed to dispose F.C.O.S.No.2 of 2018 within a period of one month from the date of receipt of a copy of this order.

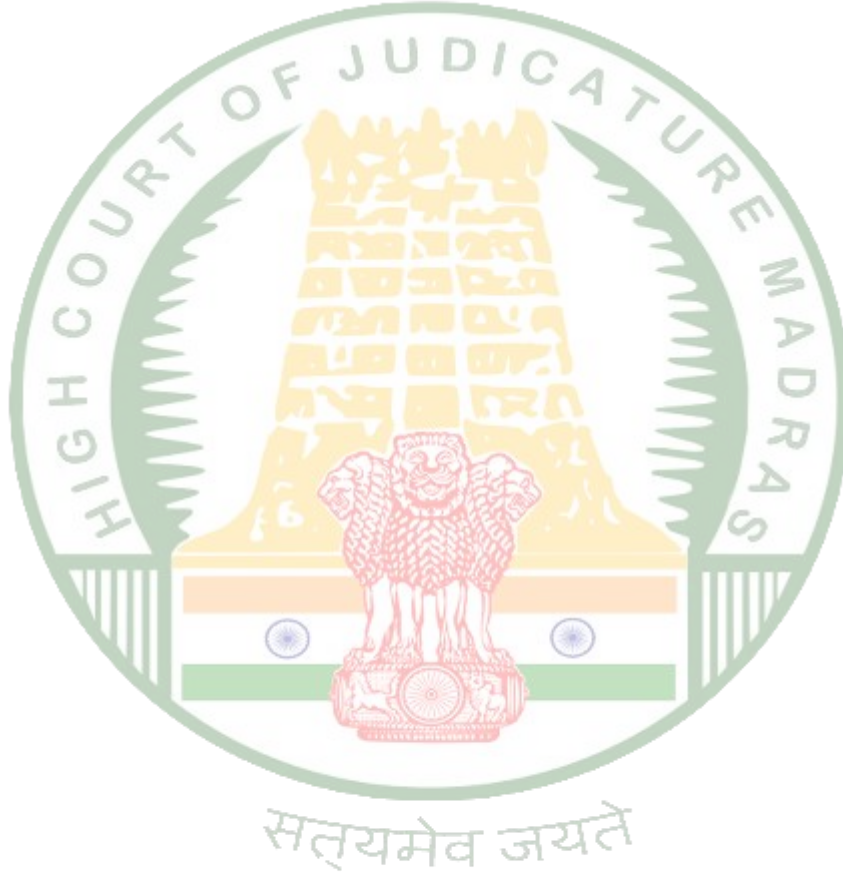
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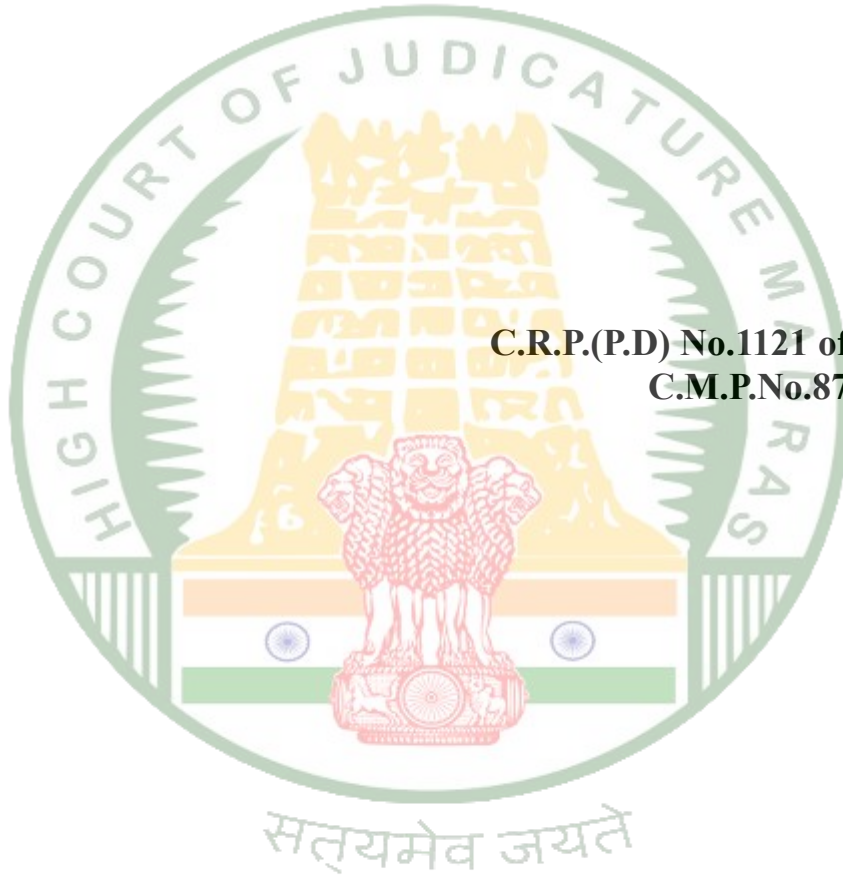
1. The learned Judge,
Family Court,
Chengalpet.
2. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

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