

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(P.D) No.1840 of 2021
and
C.M.P.No.14355 of 2021**

D.Sakthivel ...Petitioner

Vs.

Ambika Sakthivel ...Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the petition and order dated 30.07.2021, in O.P.No.2409 of 2018 passed by the learned V Additional Judge, Family Court, Chennai.

For Petitioner : Mr.T.S.Rajamohan

ORDER

This Civil Revision Petition is filed, to set aside the petition and order dated 30.07.2021, in O.P.No.2409 of 2018 passed by the learned V Additional Judge, Family Court, Chennai.

2. The learned counsel for the petitioner submitted that the petitioner filed a petition in O.P.No.2409 of 2018, under Section 13 (1) (ia) of the Hindu Marriage Act 1955, seeking divorce against the respondent. The respondent filed counter claim in O.P.No.2409 of 2018, stating that she is also willing for divorce. Thereafter, when O.P.No.2409 of 2018, came up before the learned V Additional Judge, Family Court, Chennai, on 16.03.2021 for hearing, it was ordered as follows:

“The respondent also submitted a counter claim stating that she is also willing for divorce. Hence there is no need for trial in this O.P. Hence, suitable orders will be passed on 16.04.2021”.

3. Thereafter, O.P.No.2409 of 2018 was adjourned to various dates, viz., 16.04.2021, 25.05.2021, 15.06.2021 and 30.07.2021. In the said Original Petition, the learned V Additional Judge, Family Court, Chennai, on 30.07.2021, ordered as follows:

“Petitioner has filed a petition claiming dissolution of marriage on the ground of cruelty. PW1 cross, petitioner and respondent present. Counter claim has been filed by the respondent claiming divorce on the

ground of cruelty. Hence, both the petitioner and the respondent are directed to let in evidence regarding the cruelty alleged by both of them in order to assist the Court to reach finality on 25.08.2021”.

4. The grievance of the petitioner is that, when the learned V Additional Judge, Family Court, Chennai, found on 16.03.2021 that there is no need for trial in O.P.No.2409 of 2018 and orders would be passed on 16.04.2021, posting the O.P.No.2409 of 2018 again for giving evidence, for recording the cruelty alleged by both the petitioner and the respondent, could not be justified. The above adjudication order of the learned V Additional Judge, Family Court, Chennai, dated 30.07.2021, is liable to be set aside and the divorce petition in O.P.No.2409 of 2018 is liable to be allowed.

5. Admittedly, O.P.No.2409 of 2018 was filed by the petitioner for seeking divorce. The respondent has also filed a counter stating that she is also willing for divorce. Technically, it appears that the respondent has consented for divorce, but there are allegations and counter allegations

against the parties in the petition and counter. Expressing the view that the orders would be passed and then posting the case for recording the evidence of the parties by the Trial Court cannot be faulted, for the reason that the petitioner has to prove his case on the allegations raised for grant of divorce on the ground of cruelty. If the respondent really does not want to contest the claim of the petitioner, it is open to the respondent to say, does not want to cross examine the petitioner and record her case for divorce, during the course of cross examination. Recording of evidence will safeguard the sanctity of the order. If the parties are examined on oath box, they cannot resile their evidence later. Otherwise, there is a possibility of one or the other party challenging the order at a later point of time, for not recording the evidence. Even in ex-parte cases, evidence is recorded. By all means, posting of the case for recording the evidence of the petitioner and the respondent is in accordance with law and cannot be faulted.

6.In view of the counter filed by the respondent and limited scope of enquiry, the learned V Additional Judge, Family Court, Chennai, is directed to dispose of the case in O.P.No.2409 of 2018 as expeditiously as

possible, preferably within a period of three months from the date of receipt of a copy of this order.

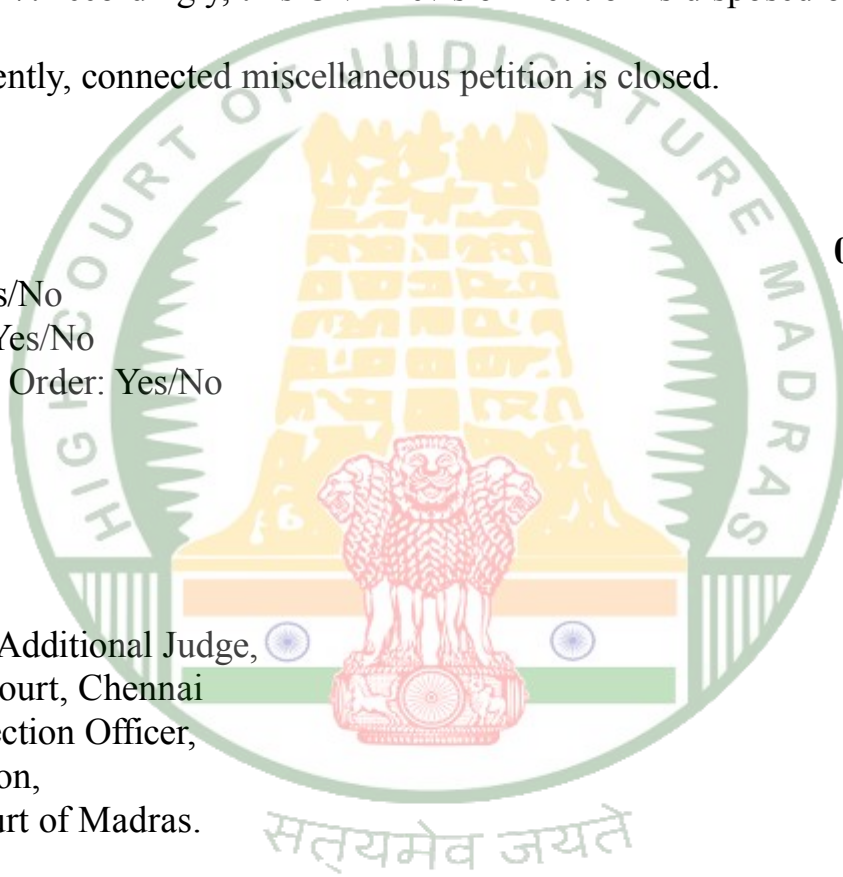
7.Accordingly, this Civil Revision Petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

ep/Jer
Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No

09.09.2021

To
1. The V Additional Judge,
Family Court, Chennai
2. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

ep



C.R.P.(P.D) No. 1840 of 2021

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