

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.4680 of 2017

and

C.M.P.Nos.22042 of 2017 & 1151 of 2018

K.Madan @ Madan Prakash .. Petitioner

Vs.

K.Kamali @ Kamalaveni .. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 02.11.2017 made in I.A.No.1514 of 2017 in H.M.O.P.No.707 of 2015 on the file of the Principal Family Court, Chennai.

For Petitioner : Mr.M.Velmurugan

For Respondent : Mr.P.Parthiban

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the order dated 02.11.2017 made in I.A.No.1514 of 2017 in H.M.O.P.No.707 of 2015 on the file of the Principal Family Court, Chennai.

2.The petitioner filed H.M.O.P.No.707 of 2014 against the respondent for divorce on the ground of cruelty under Section 13 (1) (i-a) of Hindu Marriage Act, 1955. According to petitioner, the respondent is of suspicious nature and has made allegation that petitioner is having illicit relationship with his own mother and sister. The respondent filed counter affidavit and is contesting the case. Trial commenced. The petitioner examined himself as P.W.1 and examined one Sundar, S/o. Duraikannu, the President of Panchayat as P.W.2. The respondent also filed proof affidavit. When the O.P. was posted for cross examination of respondent, the petitioner filed I.A.No.744 of 2017 for a direction to the respondent to subject herself to examination by an expert in Psychiatry or any other related science at Institute of Mental Health, Medavakkam Tank Road, Kilpauk, Chennai-600 010, Tamil Nadu. The respondent filed counter affidavit and denied the allegations made against her and objected for examining her by Psychiatrist. The learned Judge by the order dated 27.04.2017 dismissed the said I.A.No.744 of 2017.

WEB COPY

3.Thereafter the petitioner filed the present I.A.No.1514 of 2017 on 04.07.2017 under Order VI Rule 17 read with Section 151 C.P.C. to permit the petitioner to amend the petition by including Section 13(1)(iii). According

to petitioner, from the beginning of marriage the respondent is behaving abnormally. She used to shout at the petitioner and doubted him that he was having illicit relationship with number of women including wife of her uncle and her own sister Iswarya. The petitioner also suspects every Doctor who treated her and make allegations that they gave wrong medicines that affected her health. The petitioner wanted the respondent to consult a Psychiatric Doctor, but she refused. The petitioner consulted a Psychiatrist Dr.Fernandez, Home for Schizophrenia, Mugalivakkam, Chennai, on 10.08.2013 and informed the Doctor all the behaviour of the respondent. Dr.Fernandez sensed the symptoms to be of personality disorder PPD (Paranoid Personality Disorder), which may be the cause for the behaviour of the respondent. PPD (Paranoid Personality Disorder) needs further diagnoses for confirmation and requires continuous medication if confirmed. Since the respondent never listen to the petitioner, neither counselling nor treatment was taken. In such circumstances, the petitioner filed I.A.No.744 of 2017 for sending the respondent to Medical examination by an expert in Psychiatry or other related science at Institute of Mental Health, Medavakkam Tank Road, Kilpauk, Chennai – 600 010, Tamil Nadu. The said I.A.No.744 of 2017 was dismissed by the learned Judge by the order dated 27.04.2017, holding that petitioner filed main O.P. for divorce on the ground of cruelty and not on the ground of

mental illness of the respondent. The learned Judge further held that the petitioner has not filed petition for divorce on the ground of mental condition of the respondent and it is unnecessary to subject the respondent to Psychiatric test. In view of the same, the petitioner has filed the present I.A.No.1514 of 2017 to amend the prayer on the ground of cruelty and mental illness instead of cruelty. The respondent filed counter affidavit in the said I.A.No.1514 of 2017 and denied all the averments and contended that the petitioner has not made the said allegations in the H.M.O.P. In 30 pages proof affidavit filed by the petitioner also he has not made these allegations. The petitioner has come out with the present I.A. only as he cannot prove the cruelty as alleged by him in the H.M.O.P. and to drag on the proceedings. The respondent further stated that the Family Court Judge is watching the respondent for more than two years at the time of hearing and the respondent never behaved in abnormal way. After dismissal of I.A.No.744 of 2017, the present petition is filed and prayed for dismissal of I.A.No.1514 of 2017.

4.The learned Judge considering the averments in the petition in H.M.O.P., affidavit and counter affidavit, dismissed the I.A., holding that amendment of the pleadings after commencement of Trial can be ordered only when a party seeking amendment proves that the amendment could not have

been sought for inspite of due diligence and also the relief already sought for and the relief now sought for by way of amendment are extreme opposite and it could not be clubbed together.

5. Against the said order dated 02.11.2017 made in I.A.No.1514 of 2017, the petitioner has come out with the present Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

7. From the materials on record, it is seen that the petitioner has filed H.M.O.P. for divorce on the ground of cruelty by the respondent. The petitioner has alleged that the respondent is making frivolous, false allegations against the petitioner that he is having illicit relationship with his own mother and sister. The petitioner has not made any allegation that the respondent is suffering from mental disorder or she is having any Psychiatric problem in the main H.M.O.P. The petition filed by the petitioner is only on the ground of cruelty based on the averments made in the H.M.O.P. The petitioner examined himself as P.W.1 and was cross examined. The petitioner also

examined one Sundar, S/o. Duraikannu, the President of Panchayat as P.W.2. Both P.W.1 and P.W.2 were cross examined by the counsel for respondent. The petitioner without making any allegation earlier about the mental condition of the respondent either in H.M.O.P. or in the proof affidavit, is not entitled to the present relief sought for by way of amendment after commencement of Trial.

8.As per Order VI Rule 17, an amendment after the commencement of Trial normally will not be allowed or permitted. Only when the person seeking amendment after commencement of Trial pleads and proves that inspite of due diligence he could not file application for amendment before commencement of Trial, the same can be considered. In the present case, the petitioner has not alleged that inspite of his due diligence he could not have filed the present I.A. for amendment. Further, it is to be taken note of the fact that the petitioner states that he consulted Psychiatrist Dr.Fernandez, Home for Schizophrenia, Mugalivakkam, Chennai, who after considering the information given by the petitioner about the behaviour of the respondent, diagnosed that respondent is suffering from PPD (Paranoid Personality Disorder). The petitioner further stated that the said Dr.Fernandez opined that by examining the respondent only the same can be confirmed and treatment

can be suggested. Even when the petitioner came to know about the mental condition of the respondent as per the opinion of Doctor, did not file any application for amendment of H.M.O.P. to include the relief of divorce on the ground of cruelty and mental illness of the respondent. The petitioner has not given any reason for not filing the application for amendment before commencement of Trial, especially when the petitioner has filed detailed proof affidavit and was cross examined elaborately. The petitioner also examined one Sundar, S/o. Duraikannu, the President of Panchayat as P.W.2. and counsel for respondent cross examined P.W.2. The respondent also filed proof affidavit and was examined in chief. When the H.M.O.P. was posted for evidence of respondent, the petitioner filed I.A.No.744 of 2017 for a direction to refer the respondent to Medical examination by an expert in Psychiatry or other related science at Institute of Mental Health, Medavakkam Tank Road, Kilpauk, Chennai – 600 010, Tamil Nadu. The learned Judge dismissed the said I.A. on 27.04.2017.

9. After three months of said dismissal, the petitioner has come out with the present I.A.No.1514 of 2017. The petitioner has stated that due to dismissal of I.A.No.744 of 2017, this petition for amendment is necessary. As already stated, the petitioner has not given any reason for not including the

said relief in the H.M.O.P. filed by him and for not filing the I.A. for amendment before commencement of Trial. The petitioner has not stated in the affidavit filed in support of the present petition that inspite of due diligence he could not have filed the I.A. for amendment before commencement of Trial. The Division Bench judgment of the Hon'ble Apex Court reported in **(2006) 4 SCC 385, (Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others)**, relied on by the learned counsel appearing for the petitioner do not advance the case of the petitioner. In that case, the Hon'ble Apex Court held that by amendment cause of action arose after the suit and amendment did not change the basic structure of the suit. It is not the case of the petitioner that respondent became mentally ill after he filed H.M.O.P. Secondly, it is not the case of the petitioner in H.M.O.P. that respondent is suffering from mental illness and that he is entitled to divorce on that ground also. The petitioner without any pleading is seeking amendment by introducing a new case that respondent is mentally ill. Such amendment without pleading, that too after commencement of Trial cannot be allowed. The learned Judge considered all the materials placed before him in proper perspective and dismissed I.A.No.1514 of 2017 by giving cogent and valid reason. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

10.For the above reason, this Civil Revision Petition is dismissed. H.M.O.P. is of the year 2014 and the learned Principal Family Judge, Chennai, is directed to dispose of the said H.M.O.P. as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed. No costs.

20.10.2021

krk

Index : Yes / No

Internet : Yes / No

To

The learned Principal Judge,
Principal Family Court,
Chennai.

WEB COPY

V.M.VELUMANI, J.

krk



C.R.P.(PD).No.4680 of 2017

WEB COPY

20.10.2021