



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :03.08.2021

(Reserved on 22.02.2021)

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.1662 of 2019

and

CMP(MD)No.8621 of 2019

S.Athira Santhosh

... Petitioner/Respondent

vs.

R.Saravana Kumar

... Respondent/Petitioner

Petition filed under Article 227 of the Constitution of India, to strike out the petition in HMOP.No.4 of 2019 on the file of the Family Court Judge, Madurai.

For Petitioner : Mr.R.Suriyanarayanan

For Respondent : Mr.J.Sankarapandian

ORDER

This revision petition is filed by the revision petitioner/respondent praying to strike off the petition filed by the respondent herein/petitioner for restitution of conjugal rights in H.M.O.P.No.4 of 2019 on the file of the Family Court, Madurai.

2.The learned counsel for the revision petitioner submitted that the respondent herein filed the above HMOP for restitution of conjugal rights alleging that both the petitioner and the respondent, who are film actors, loved each other and their marriage was solemnised on 09.06.2019 at Samooga Jananayaga Valibar Sangam, Meenambalpuram, Madurai, in the presence of family members, friends and relatives and the said marriage was also registered on the file of Sub Registrar Office, Chokkikulam, in Marriage SI.No.351/2016. Initially, the parties were living as joint family with the parents of the respondent and thereafter, they settled at Chennai for professional purpose. It is also alleged by the respondent herein that the rental agreement and gas connection stood in the name of the revision petitioner herein. The respondent herein had further stated that the revision petitioner was taking treatment for pregnancy, but she voluntarily aborted the baby for her profession and that as per the ill advice of her colleagues in film industry, the petitioner refused to live with the respondent and on 10.11.2018, she voluntarily went out from the matrimonial



home at Saligramam, Chennai, without informing the respondent and alleging so, the respondent herein filed the above petition for restitution of conjugal rights on the file of the Family Court, Madurai. To strike off the above HMOP, the revision petitioner/wife has filed this revision petition.

3.The learned counsel for the revision petitioner would further submit that no marriage was solemnized between the petitioner and the respondent as alleged in the HMOP petition in accordance with Section 7 or 7A of the Hindu Marriage Act. A bare reading of the averment and the supporting material in the HMOP did not satisfy the ingredients of Sections 7 and 7A of the Hindu Marriage Act, 1967, so as to take cognizance of the petition and therefore, the petition in HMOP is liable to be struck off. He would further submit that the respondent herein filed the above HMOP only based on the Marriage Certificate dated 09.06.2016 which is an abuse of process of law, as the said certificate has not been registered in accordance with provision of Section 7 of the Tamil Nadu Registration of Marriages Act and the said certificate has been obtained without the petitioner's knowledge and consent.

4.The learned counsel for the revision petitioner would further state that the medical reports and the rental agreement filed by the respondent in his written arguments are fabricated and false. He would also state that the solemnization certificate signed by an advocate namely, Idhayachandran has no legal sanctity and the consequential registration of marriage based on the said certificate, has no legal validity in view of the judgment in R.Swaathy vs. The Sub Registrar reported in 2014 (6) CTC 129. Thus, he prayed to allow this revision petition.

5.The learned counsel for the respondent would state that the respondent is having all the relevant documents to prove his case before the Family Court, Madurai and he is ready to conduct the case on day-to-day basis and even now the respondent is willing to live with the petitioner, but the petitioner has filed the present revision with all frivolous allegations without any evidence. He would further state that the petitioner is denying the factum of marriage which is a disputed question that can be gone into only in full fledged trial. This revision petition has been filed by the revision petitioner only to drag on the proceedings. Thus, he prayed for dismissal of the revision petition.

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

7.According to the respondent/petitioner, both of them loved each other and married, for which he produced Marriage Certificate. According to the revision petitioner, there was no marriage solemnized between them in accordance with Section 7 of the Hindu Marriage Act and the Marriage Certificated has not been registered in accordance with Section 7 of the Tamil Nadu Registration of Marriages Act and the signature in the application of marriage certificate has been obtained only by way of misrepresentation.



8.The issues involved, in this case, as to whether the marriage was solemnized and registered in accordance with law or not? and whether the signature and thumb impression of the revision petitioner in the application for registration of marriage were obtained by way of misrepresentation or not? can be decided only by oral and documentary evidence to be adduced by the parties. It cannot be decided based on the averments of the parties. Therefore, this Court is of the considered view that the proper remedy for the revision petitioner is to approach the Family Court, Madurai and to conduct the case in H.M.O.P.No.04 of 2019. It is open to the revision petitioner to raise all the grounds raised in this revision petition before the Court below. Considering the year of the HMOP, this Court is inclined to direct the Court below to dispose of the same within a stipulated period.

9.In the result, this Civil Revision Petition is disposed of with a direction to the Court below to dispose of HMOP.No.4 of 2019 on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. Both the parties are directed to cooperate with the Court below for early disposal of the case. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Judge,
Family Court,
Madurai.

PRE-DELIVERY ORDER MADE IN
CRP (MD)No.1662 of 2019
Dated:03.08.2021