

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CMA.No.3710 of 2021 and CMP.No.21759 of 2021

K.R.Susila ... Appellant

-vs-

P.Rathinavel ... Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against the fair and decreetal order dated 13.10.2021 passed in I.A.No.2 of 2021 in FCOP.No20 of 2016 by the learned Judge, Family Court, Salem.

For Appellant : Mr.CKM.Appaji

For Respondent : ...

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

This Civil Miscellaneous Appeal has been filed challenging the fair and decreetal order dated 13.10.2021 passed in I.A.No.2/2021 in FCOP.No.20 of 2016 by the learned Judge, Family Court, Salem, thereby declining to grant permission to file additional counter affidavit under Order 8 Rules 9 and 10 of CPC. by the appellant herein.

2. Learned Counsel appearing for the appellant-wife submitted that when the respondent-husband has filed FCOP.No.20/2016 on the file of the Family Court, Salem, seeking divorce on the ground of cruelty under Sections 13 (1)(i) and 13 (i-a) of the Hindu Marriage Act, 1955, inter alia, that the appellant-wife is in illicit intimacy with one Nagaraj, the 2nd respondent in FCOP.No.20/2016, the learned Family Court taking up

the said case for trial, examined the respondent-husband as P.W.1. After the completion of the chief examination, the cross examination of P.W.1 was also over. It is, at this stage, after a lapse of 5 years, when the appellant-wife filed an application under Order 8 Rules 9 and 10 of C.P.C. to file additional counter, the learned Family Court disagreeing with the prayer made by the appellant to file additional counter refused to grant permission. When the respondent-husband has made false allegation against the appellant-wife implicating her with one Nagaraj charging continuous illicit intimacy, the learned Counsel appearing for the appellant herein before the lower court for the reasons best known to him has not taken up the said point of continuous illicit intimacy to disprove the said allegation. Therefore, to fill up the lacunae in the pleadings, the appellant was advised to move an additional counter. Hence, permission was sought for under Order 8 rules 9 and 10 of CPC. requesting the court that if a chance is given to the appellant to file additional counter affidavit to bring forth the truth that would enable the court to reach a fair decision, no prejudice would be caused to anyone. Since additional counter affidavit was sought to be filed after 5 years from the date of filing of the petition, the completion of the cross-examination of P.W.1, cannot be road block for rendering justice, he pleaded.

3. But we are not able to find any iota of merit whatsoever on the submissions of the learned Counsel for the appellant-wife. The reason being that it is a case of the respondent-husband before the Family Court in FCOP.No.20/2016 filed for divorce under Sections 13 (1)(i) and 13(i-a) of the Hindu Marriage Act, 1955 alleging among other things that the appellant-wife has been in illicit intimacy with one Nagaraj and the claim of the husband shows that in spite of the fact that her mother came and tendered unconditional apology for the conduct of her daughter, she has been still continuing the same. In this regard, it is relevant to mention the allegations of adultery and cruelty said to have been caused by his wife, inasmuch as in January, 2015, the wife gave a police complaint before the Commissioner of Police, Salem, stating that one Nagaraj and his wife Kalaiyarasi borrowed Rs.30,00,000/- from her in the year 2010, however, they did not repay the said sum. Although she stated the borrowal of the said sum, she did not mention anything about the police complaint filed against the said Nagaraj and his wife. When such facts are put against the wife, she has not stated clearly as to what prevented her in giving any reply thereto for the past 5 years. Fourthly, when there are serious allegations made by the respondent-husband stating that the appellant-wife has been in continuous illicit relationship with the 2nd respondent therein,

despite of the warning of the respondent-husband and unconditional apology by her mother, she could have filed a detailed counter denying the said allegations. This has not been done so for the past 5 long years. Therefore, the learned Family Court, in our considered opinion, has rightly giving two acceptable reasons, namely, a) after the lapse of 5 years, an attempt has been made to protract the disposal of the matter; and b) after the cross-examination of P.W.1 when the main FCOP is pending for appellant side for further evidence, she cannot come forward with the petition seeking permission to file counter affidavit stating self-contradictory averments, has dismissed the I.A.No.2/2021. Hence, we find no infirmity or illegality in the impugned order.

4. In the result, the Civil Miscellaneous Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

tsi

To

1.The Judge, Family Court, Salem.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.K.M.Appaji, Advocate SR.No.2604

CMA.No.3710 of 2021

AD(CO)
CB(08/03/2022)