



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.NO.4475 OF 2019

AND

C.R.P.NO. 3633 OF 2019

AND

C.M.P. NOS.25310 & 23849 OF 2019

C.M.A. No.4475 of 2019

S.Vivek,
Rep. by his father-Power Agent
Shanmuga Sundaram

...Appellant / Petitioner /
Petitioner

Vs

Ruchitha

...Respondent / Respondent /
Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act against the Fair and Decreetal Order dated 07.09.2019 made in I.A.No.227 of 2018 in FCOP No.188 of 2018 passed by the Judge, Family Court, Salem.

C.R.P.No.3633 of 2019

V. Ruchitha

...Petitioner / Respondent /
Respondent

Vs.

S.Vivek,
Rep. by his father Power Agent
Shanmuga Sundaram

...Respondent / Petitioner /
Petitioner

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 07.09.2019 in I.A.No.195 of 2018 in F.C.O.P.No.188 of 2018 on the file of the Judge, Family Court, Salem.



C.M.A. No. 4475 of 2019

For Appellant : Mr.S.Mukunth
for M/s.Sarvabhuman Associates

For Respondent : Mr.K.Selvaraj

C.R.P.No. 3633 of 2019

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.S.Mukunth
for M/s.Sarvabhuman Associates

COMMON JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

C.M.A.No.4475 of 2019 has been filed by the husband/appellant, challenging the fair and decretal order dated 07.09.2019 made in I.A.No.227 of 2018 in F.C.O.P.No.188 of 2018 on the file of the Family Court, Salem. C.R.P.No.3633 of 2019 is filed by the wife to set aside the order dated 07.09.2019 passed in I.A.No.195 of 2018 in F.C.O.P.No.188 of 2018 on the file of the Family Court, Salem.

2.Since both the cases are arising out of the orders passed in I.A.Nos.195 and 227 of 2018, they are taken up together and disposed of by the common order.

3.The appellant is the husband of the respondent. Marriage between them was solemnized on 04.03.2015 at Rajasthani Sang Kalyana Mandapam, D.B.Road, R.S.Puram, Coimbatore. The appellant filed F.C.O.P.No.230 of 2016 before the Family Court, Coimbatore, seeking declaration of the marriage held on 04.03.2015 as null and void under Section 12 of the Hindu Marriage Act. Pending O.P, the respondent filed F.C.O.P.No.202 of 2018 before the Family Court, Salem, under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights.

4.It is represented that the F.C.O.P.No.230 of 2016, which was filed by the appellant, before the Family Court, Coimbatore was transferred to Family Court, Salem and it is renumbered as F.C.O.P.No.188 of 2018. The respondent filed an application in I.A.No.227 of 2018 under Section 24 of the Hindu Marriage Act, seeking Rs.1 lakh as interim maintenance and the appellant/husband filed an application in I.A.No.227 of 2018 under Order III Rule 2 C.P.C., to grant permission and enquire



and conduct counseling with him through Video Conference in the presence of the respondent/wife and her counsel.

5. Both the applications were allowed by an order dated 07.09.2019. Aggrieved by the same, the parties are before this Court.

6. The case of the wife is that her husband was working in Canada and earning CAD\$1,10,000/- per annum in Canadian dollars. The appellant contested the petition stating that the wife is an employee of M/s Sridevi Minerals and there was no necessity to pay interim maintenance.

7. It is an admitted fact that the appellant is a Software Engineer and employed. Now, he is in USA. Further, the appellant has not produced any materials to show that his wife/respondent is earning and hence the interim maintenance of Rs.20,000/- per month was fixed by the Family Court, Salem. In such circumstances, the direction issued by the Family Court, Salem to pay interim maintenance of Rs.20,000/- per month to the respondent and litigation expenses of Rs.10,000/- cannot be interfered in this Civil Miscellaneous Appeal. In fine, the C.M.A.No.4475 of 2019 fails and the same is dismissed. No costs. Consequently connected miscellaneous petition is closed.

8. In so far as the Civil Revision Petition, in I.A.No.195 of 2018, the appellant/husband sought for permission from the Family Court, to appear through Video Conference and the Court below also allowed the same. The appellant/husband undertakes to appear before the Family Court, Salem to give evidence. Therefore, the prayer sought for in this Civil Revision Petition has become infructuous and hence the same stands closed.

9. In the instant case, It is contended that the marriage between the parties was not consummated and there is no possibility for re-union. Hence, we direct the Family Court, Salem to dispose of both the F.C.O.P.Nos.188 of 2018 and 202 of 2018 by conducting joint trial, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

Jer



To

1. The Judge,
Family Court,
Salem.

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Copy To

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

+2ccs to M/s. Sarvabhauman Associates, Advocate Sr. Nos. 12585,
12586

+2ccs to M/s. K. Selvaraj, Advocate Sr. No. 12242, 12243

C.M.A. No. 4475 of 2019
and

C.R.P. No. 3633 of 2019
and

CMP Nos. 25310 & 23849 of 2019

AJS (CO)
RVM(11/05/2022)