



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.NPD.No.4129 of 2017  
and  
C.M.P.Nos.19358 & 19359 of 2017

Kalyana Soundari

... Petitioner

Vs.

1.Vijaya Baskar  
2.S.Palani  
3.P.Thanigainayagi  
4.Kumari

...Respondents

Civil Revision Petition filed under Article 227 of Constitution of India,  
to set aside the order dated 18.07.2017 passed in I.A.No.169 of 2015 in  
O.P.No.198 of 2014 on the file of the Family Court, Thiruvallur.

For Petitioner .. Mr.R.Srinivas

For Respondents .. Mr.M.Balasubramanian

**ORDER**

**WEB COPY** The revision petitioner is aggrieved by an order dated 18.07.2017 in I.A.No.169 of 2015 in HMOP No.198 of 2014 passed by the Family Court, Thiruvallur.

2.The revision petitioner is the wife. The 1<sup>st</sup> respondent is the husband and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents are other family members of the husband.

3.Let me term the revision petitioner as the wife and the 1<sup>st</sup> respondent as the husband for the sake of convenience.

4.The husband and the wife appear to have formally engaged themselves in a judicial lis pertaining to their martial disputes for at least 17 years as on date.

5.The husband originally filed HMOP No.76 of 2003 seeking a declaration that the marriage solemnized between himself and the wife must be declared a nullity on the ground of impotency.



6.For good measure the wife filed HMOP No.25 of 2005 seeking restitution of conjugal rights.

7.Both the matrimonial Original Petitions were taken up together and a common judgment was passed on 22.02.2011 by the learned Additional District Judge / Fast Track Court No.III, Thiruvallur.

8.Finally after examining the pleadings and the evidence, HMOP.No.76 of 2003 filed by the husband was dismissed and HMOP No.25 of 2005 filed by the wife was allowed. This implied that the marital relationship continued and subsisted.

9.Thereafter, the husband filed two Civil Miscellaneous Appeals in CMA.Nos.1914 & 1915 of 2011. They came up for consideration before a Division Bench of this Court and by a common judgment dated 21.11.2013 both the Civil Miscellaneous Appeals were dismissed. This again implied that the marital relationship continued and subsisted.

10.Thereafter, the husband, probably agitated by such adverse order, filed HMOP No.198 of 2014 seeking frustration of the marriage on



the ground of cruelty and desertion.

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11.The wife then filed two Interlocutory Applications. One application was in I.A.No.108 of 2014 which was filed under Order VII Rule 11 CPC. It was claimed that the averments in HMOP No.198 of 2014, mirrored the earlier averments in HMOP No.76 of 2003 which had suffered an order of dismissal and therefore, it was claimed by the wife that HMOP.No.198 of 2014 was an indulgence in re-agitating the same issues and therefore, it should be rejected.

12.The said Interlocutory Application came up for consideration before the Family Court, Thiruvallur, who had allowed the said application on 18.07.2017 and consequently passed a decree in HMOP No.198 of 2014 on the very same day dismissing / rejecting it.

13.Questioning that particular order, the husband had originally filed a Civil Revision Petition before this Court. That Civil Revision Petition appears to have meandered around but finally, it had been stated by the learned Single Judge that the proper approach would have been to file a Civil Miscellaneous Appeal and that the Revision Petition would



not lie and had therefore directed the husband to convert the Revision  
Petition as the Civil Miscellaneous Appeal.

14.I am informed that by Mr.M.Balasubramanian, learned counsel for the husband that the conversion process is still under way in the office of the Registry of the High Court.

15.As stated the wife had also filed a second application in I.A.No.169 of 2015. This application had been filed taking advantage of Section 26 of the Protection of Women from Domestic Violence Act, 2005 (the Act). This application also came up before the Family Court Judge, Thiruvallur, who by order dated 18.07.2017 after reducing the facts and the details of the various litigations between the parties as stated above had finally stated that since HMOP No.198 of 2014 itself had been rejected, the Interlocutory Application in I.A.No.169 of 2015, had become infructuous and that the wife was not entitled for any relief as sought in the application and therefore, dismissed the same.

16.Aggrieved by the said dismissal, the wife is before this Court, by way of filing this Revision Petition.



17. Heard arguments advanced by Mr.R.Srinivas, learned counsel for the revision petitioner and Mr.M.Balasubramanian, learned counsel for the respondents.

18. It is the contention of the Mr.R.Srinivas, learned counsel for the revision petitioner who took this Court through Section 26 of the Act that the said provision is an enabling provision, wherein it provides that any relief sought under Sections 18, 19, 20, 21 and 22 of the Act, can also be filed, in any pending suit or in any petition pending before the Family Court and therefore stated that I.A.No.169 of 2015 had been lawfully filed before the Family Court where HMOP No.198 of 2014 was pending. It is further contended by the learned counsel that any application under Section 26 of the Act, should be construed as an application in *para materia* to a counter claim in a Civil Suit. It is contended that suit is dismissed or abandoned, an obligation is still placed on the Trial Judge to examine such a counter claim.

19. Drawing a parallel with that particular procedure Mr.R.Srinivas, learned counsel insists that the dismissal of I.A.No.169 of 2015 by merely stating that it had become infructuous, is not a proper



approach and that it requires interference by this Court.

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20.Mr.M.Balasubramanian, learned counsel who appears for the respondents, on the other hand, stated that the main HMOP itself had been rejected and therefore, no petition is pending as on date before the Family Court, Thiruvallur and if at all the direction to convert the Revision Petition filed earlier questioning rejection of the said HMOP into a Civil Miscellaneous Appeal is actually done and placed for consideration before a learned Single Judge of this Court, then the present Revision Petition can be heard along with the said Civil Miscellaneous Appeal and orders can be passed.

21.I have carefully considered the arguments advanced.

22.Section 18 of the Act relates to Protection orders. Section 19 of the Act relates to Residence orders. Section 20 relates to Monetary reliefs. Section 21 relates to Custody orders. Section 22 relates to Compensation orders. These are reliefs or orders which can be sought and also granted to a wife who feels that she had been unjustly dealt with by the husband.



23. The scope and manner in which those applications will have to be heard or dealt with, is now not under the direct examination of this Court. But Mr. R. Srinivas, learned counsel insists that Section 26 of the Act, comes into play and stated that a cursory dismissal of an application filed under Section 26 of the Act as infructuous has to be interfered with by this Court.

24. Section 26 of the Act, is as follows:-

*26. Relief in other suits and legal proceedings.—*

*(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.*

*(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.*

*(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”*



25.A careful reading reflects that the said provision is an enabling provision. The object behind it is not to drive the wife to various Courts to seek such reliefs, but to seek the relief sought in a pending litigation, whether such litigation is pending in a Civil Court or in a Magistrate Court or in a Family Court. It is to enable all the parties to agitate the issues relating to the Custody orders to be granted or the Monetary reliefs to be granted or the Compensation orders to be granted or the Protection orders to be granted, before one particular judicial forum. These issues will have to be taken up independent of the issues over which the existing suit / petition revolves.

26.In the instant case, HMOP No.198 of 2014 revolves around the issues of cruelty and desertion. The said petition has been filed by the husband. While adjudicating those particular issues, the grounds raised under Section 26 of the Act, wherein the wife seeks protection of Residence or Monetary relief or Compensation will have to be adjudicated. This has to be independently adjudicated *dehors* the relief sought in the main HMOP, even if the Original Petition seeking frustration of the marriage is dismissed or rejected.



27. In this particular case, an application was filed under Order 7

Rule 11 CPC and the Original Petition has been dismissed. I hold that still, a duty is cast on the Family Court to examine whether the wife will have to be granted protection or residence or monetary relief or compensation. These are issues which revolve around the claim of the wife and she should be given an opportunity to put forth as to why she sought those reliefs, the manner in which she had been treated and the reasons why such relief should be granted. The Court should devote its attention to examine such a plea and take a decision whether the relief sought can be granted or not and if to be granted, in what manner those reliefs will have to be granted.

28. This requires examination of the pleadings and also giving an opportunity to the parties to let in oral and documentary evidence. Even if the HMOP is dismissed, still the petition under Section 26 of the Act will have to continue independently and be adjudicated and a judicial order will have to be passed. Short circuiting the rights of the parties by holding that the application has become infructuous merely because the husband's petition is dismissed or rejected would not serve the ends of justice. If this were to be the nature of order passed, then any husband



can withdraw a HMOP and leave the wife high and dry when she seeks such or any other relief, discharge of which places an obligation on him.

29. Therefore, in order to prevent miscarriage of justice, the Family Court should ensure that the issues raised in an application filed under Section 26 of the Act, provides a platform for the parties to let in evidence and thereafter the Court should come to a conclusion, whether such relief should be granted or should be rejected. But such order should be passed on the basis of pleadings and on the basis of evidence recorded.

30. A cursory rejection stating that the application has become infructuous has to be certainly interfered with and is interfered with.

31. I would therefore, allow the Civil Revision Petition and set aside the reasoning of the Family Court, Thiruvallur that I.A.No.169 of 2015 has become infructuous merely because HMOP No.198 of 2014 had been rejected. I direct the Family Court, Thiruvallur, to take up I.A.No.169 of 2015 for hearing and examine the issues therein and provide an opportunity for both the parties, if they seek permission, to



lead evidence and test that evidence during cross-examination and permit rebuttal evidence also to be let in and thereafter come to a conclusion whether the relief sought in that particular application should be rejected or granted or the application itself should be dismissed. That particular exercise will have to be done by the learned Family Court Judge, Thiruvallur and I would handover the privilege to do that exercise to the learned Family Court Judge, Thiruvallur, but place a caveat that it should be done in manner known to law to ensure that ends of justice is delivered to both the parties.

32. With the above observations, the present Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition are closed.

04.04.2022

Internet: Yes/No

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To,  
The Family Court, Thiruvallur.



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**C.V.KARTHIKEYAN,J.**

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