



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :17.02.2022

PRONOUNCED ON :15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A (MD) No.988 of 2021

WEB COPY

Hamenth Williams

: Appellant/Petitioner/Petitioner

.vs.

1.J.Priya Phyllis

2.C.Surya

: Respondents/Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act against the fair and decretal order passed in I.A.No.1 of 2019 in D.O.P.No.186 of 2011, dated 28.06.2021, on the file of the Principal District Judge, Kanyakumari at Nagercoil.

For Appellant

: Mr.D.Saravanan

For Respondent-1

: Mr.R.Murugan

For Respondent-2

: No appearance

JUDGMENT

The husband is the appellant herein. This Civil Miscellaneous Appeal is filed against the order passed in I.A.No.1 of 2019 in D.O.P.No.186 of 2011, dated 28.06.2021, on the file of the Principal District Judge, Kanyakumari at Nagercoil.

2.The brief facts of the case are that:

The Petitioner husband filed a Divorce Petition before the Principal District Judge, Kanyakumari at Nagercoil, for dissolution of marriage solemnized between the Petitioner and the respondent which took place on 22.05.1998 at Colachel CSI Church.

'2.....The marriage between the Petitioner and the respondent took place on 22.05.1998 at Colachel CSI Church. As per Christian rites and rituals and due to the wedlock, the Petitioner has blessed with one male child namely, H.Zepinth williams, aged about 22 years. The first respondent indulged in illicit relationship with the second respondent. The Petitioner filed a petition for divorce on the ground of adultery and cruelty. The same was numbered as I.D.O.P.No.186 of 2011.The first respondent filed an I.A seeking interim alimony from the Petitioner in I.A.No.167 of 2014, the same was dismissed on 27.02.2017,against which, C.M.A.No.856 of 2017 filed before the Honourable Court. The said C.M.A was dismissed on 12.10.2017on the said terms that the first respondent was willing to give up her claim for maintenance and agree to



file a consent petition for divorce. Thereafter, the appellant issued notice through his counsel on 20.01.2018 along with Vakalath mutual consent divorce petition. Curiously, the respondent herein withdraw her promise and placed several arbitrary conditions to revoke her promise through the reply sent by her counsel on 08.02.2018.

''3.....The appellant once again filed an I.A in support of the order passed in Review Appl(MD)No.116 of 2019, dated 5.7.2019. The same was numbered as I.A.No.1 of 2019 in I.D.O.P.No.186 of 2011.....''.

Hence the present Civil Miscellaneous Appeal.

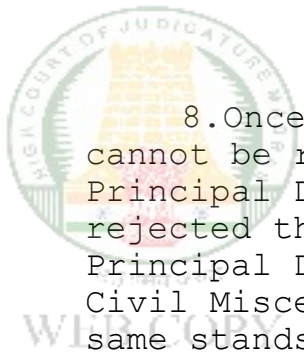
3.The learned counsel for the appellant would contend that the impugned order passed by the Principal District Judge, Kanyakumari at Nagercoil is without application of mind and ought to have re-opened the D.O.P.No.186 of 2011.

4.The Lower Court records reveal that the appellant husband has filed D.O.P.No.186 of 2011 for divorce on the ground of adultery. Pending the same, the respondent/wife had filed I.A.No.167 of 2014 seeking interim maintenance and litigation expenses. By an order, dated 27.02.2017, the said application was dismissed. Hence the respondent/wife filed C.M.A(MD)No.856 of 2017. It appears that based upon the representation given by both the parties, the Civil Miscellaneous Appeal is closed, with liberty to file petition for divorce by mutual consent under Section 10-A of the Indian Divorce Act. It appears from the record that the Petitioner/husband made not pressed endorsement in the said D.O.P.No.186 of 2011. Accordingly, the said Divorce Petition is dismissed as not pressed.

5.The grievance of the appellant husband is that after the said petition, when he has preferred a petition for divorce by mutual consent, his wife has not co-operated for filing the mutual consent petition, necessitating the filing of the present application, which is impugned herein, for re-opening the main divorce O.P.

6.In the counter affidavit filed before the trial Court, the first respondent/wife has stated that the promise made for return of articles, jewels and cash were not complied with and hence, she is not willing to file a consent divorce petition.

7.The learned Principal District Judge, Kanyakumari at Nagercoil, after perusing the factual position, as reflected in the records, has held that the contention of the appellant/husband that the main divorce O.P was closed as not pressed, is factually wrong and as per the original records, the main divorce O.P was dismissed as not pressed, in view of the endorsement made by the learned counsel for the Petitioner.



8.Once the petition is dismissed as not pressed, the same cannot be re-opened again and based upon the above principle, the Principal District Judge, Kanyakumari at Nagercoil, had rightly rejected the application and the reasons assigned by the learned Principal District Judge cannot be found fault with and hence the Civil Miscellaneous Appeal is devoid of merits and accordingly, the same stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Principal District Judge,
Kanyakumari at Nagercoil.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.R.MURUGAN, Advocate (SR-12036[F] dated 15/03/2022)

+1 CC to M/s.D.SARAVANAN, Advocate (SR-12594[F] dated 16/03/2022)

C.M.A(MD)No.988 of 2021
15.03.2022

RS(29.03.2022) 3P-6C