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C.R.P. No. 1291 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.1291 of 2023

and

CMP.No.7727 of 2023

Akhila

... Petitioner

(Cause title accepted and Kruthika Palanichamy recognised as Power of Attorney to Sole Petitioner vide Court order dated 06.04.2023 made in CMP.No.7727 of 2023 in CRP.SR.No.43883 of 2023 by TVTSJ.)

Vs

T.Anjankumar

... Respondent

PRAYER: Civil Revision Petition filed Under Article 227 of Constitution of India, praying to direct the learned Principal Family Court, Chennai to dispose O.P.No.3643 of 2022, pending on its file in a time-bound manner.

For Petitioner : Mr.V.Chethana

For Respondent : Ms.V.Jayalakshmi



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ORDER

The petitioner/wife has filed this revision petition, to dispose of O.P.No.3643 of 2022, on the file of the Principal Family Court, Chennai.

2. The learned counsel for the petitioner submitted that the petitioner has filed the present revision petition seeking a time-bound disposal of O.P.No.3643 of 2022, pending before the learned Principal Judge, Family Court, Chennai. The petitioner had left India after filing the mutual consent petition to pursue an educational course in the USA. The learned Principal Judge, Family Court had not accepted the petitioner's request to participate and appear through video conferencing and she be represented by a Power-of-Attorney. Even after multiple attempts made by the petitioner/wife and her Power-of-Attorney, for mutual consent divorce proceedings, the petitioner's Power-of-attorney Kruthika Palanichamy was not represented before the Court below, vide Deed of Special Power dated 24 January, 2023 and adjudicated as Adj 15 of 2023 by the SRO, Purasawalkam on 08.02.2023. Though, vakalat has also been filed in this regard. The



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petitioner has also filed a mutual consent petition on O.P.No.3643 of 2022 on 10.08.2022 seeking to dissolve the marriage solemnised between her and the respondent on 29.08.2016 at Shankaranarayana Mahal, Maruthamalai Main Road, Vadavalli, Coimbatore and Registered as S.No.228 of 2016 at the Office of Sub-Registrar, Vadavalli, dated 29.08.2016. The petitioner and the respondent do not have any issue, nor do they have any claims against each other. They have been separated since 01.09.2020,i.e., for more than 2 and a half years. After filing the present petition, the petitioner was granted admission to pursue a Dual Master's Degree in Health Administration and Health Informatics, University of Missouri-Columbia, USA. She left Chennai and went to USA on 19.08.2022. The duration of the course is from 2022 to 2025.

3. The second mutual consent petition was filed on 10.08.2022. However, during the pendency of the secondpetition, the petitioner and the respondent decided to file the necessary petition to waive the 6 month waiting period, as they had been separated for over one and a half years before filing the mutual consent petition. The petitioner's sister was



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appointed as her Power Agent, vide Deed of Power dated 17.08.2022 which was executed when the petitioner/wife was in Chennai.

4. When this CRP is taken up for hearing, the revision petitioner appeared through video-conference from USA and the respondent/husband appeared in person before this Court. Both of them are seeking divorce, and hence they filed H.M.O.P.No.3643 of 2022, before the learned Principal Judge, Family Court, Chennai, under Section 13-B of the Hindu Marriage Act, 1955. The petitioner and the respondent were present before the trial proceedings on several occasions. Thereafter, she went to abroad as she got admission in the reputed institution. Then she permitted her sister as a Power of Attorney to attend the Court proceedings, and for more than four hearings her sister attended the Court proceedings travelled from Mumbai to Chennai, and as there was no Presiding Officer in the Court, she returned back. The petitioner's parents are senior citizens who cannot appear in the Family Court to represent the petitioner/wife owing to their advanced age and health conditions, due to which the petitioner appointed Kruthika Palanichamy, her close family friend, as her Power Agent. Through, the said



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Power of Attorney, the petitioner/wife filed a Power Agent petition and the video-conferencing petition along with the urgent, advance, and waiver petitions to waive the 6 month period along with the respondent/husband before the learned Principal Judge, Family Court, Chennai, and the same was returned by the Court below. Thereafter, the petitioner approached this Court by invoking Article 227 of the Constitution of India, to recognize her through Power of Attorney - "Kruthika Palanichamy" and to accept the cause title and also prayed to dispose of H.M.O.P.No.3643 of 2022, on the file of the Principle Family Court, Chennai.

5. To support his contentions, the learned counsel for the respondent/husband relied on the following authorities of this Court reported in **2014 (5) CTC 177, [Pauvya vs Kanagavel]**, which reads as follows:

20. Absolutely, the role of the Power of Attorney to assist the principal. who will be not in a position to appear in person to prosecute the proceedings before the Court, acquires significance for consideration. On analyzing the rulings on this issue, we gather and sum up the following regarding the role of the Power of Attorney:



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(1) Power of Attorney can appear, plead and act on behalf of the party, but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness box is altogether a different act. A General Power of Attorney holder cannot be allowed to Appeal as a witness on behalf of the principal in the capacity of the principal:

(ii) The Power of Attorney holder does not have the personal knowledge of the matter of the Appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are exclusively to the personal knowledge of the principal.

(iii) In the Family matters, it is not possible for the spouse to engage a power and act on his/her behalf to give evidence before the Family Court which she/he alone has personal knowledge.

(iv) There is no legal impediment under the Family Courts Act, for a Power of Attorney to appear on behalf of the Principal and the only legal embargo is that the recognised agent should not be a legal practitioner. Any person, not being a legal practitioner, can be nominated as an agent under Order 3, Rule 2, C.P.C., to prosecute or defend the parties and until the Family Court passes any specific order, directing appearance of the party, depending upon the facts and circumstances of the case. The persons, who are exempted from the term 'legal practitioner' are the Parents, brothers and sisters. Even then for deposing the facts that are within the personal knowledge of the principal, they should refrain themselves, but the principal should appear before the Court and depose.



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(v) Under Section 13-B of the Act, a Petition for dissolution of marriage by a Decree of Divorce by mutual consent, shall be presented by the parties to the marriage and not through the Power of Attorney since they should satisfy the Court that as on the date of presentation of the case, they had not been living together as Husband and Wife for more than one year, that they have not been able to live together and that they have mutually agreed for the dissolution.

(vi) The endeavor of the Court should be as far as possible to sustain and nurture the institution of marriage. Section 9 of the Family Courts Act specifically envisages that in every Suit or proceedings, endeavor shall be made by the Family Court in the first instance, where it is possible to do so consistent with nature and circumstances of the case to assist and persuade the parties in arriving at settlement in respect of the subject-matter of the Suit or proceedings and thus, the personal appearance or presence of the parties concerned becomes inevitable and necessary at any rate from the stage of hearing after the appearance of the other side to the proceedings and the efforts contemplated to be made by the Family Court under the statute cannot be effectively carried out through a recognised agent or Power of Attorney of the party and having regard to the sensitive nature, personal feelings and behavioral attitudes to be assessed by the Court in carrying out the mandate contained in Section 9 of the Family Courts Act. Personal appearance, though not initially required, becomes absolutely necessary after the appearance of the Respondent to the proceedings. Therefore, the parties should make personal appearance before the Court as and when so stipulated or directed or indicated by the Family Court.

21. In view of the above discussion and observation made by us, we are of the view that that the Appellant/Wife



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shall be at liberty to prosecute the proceedings filed under Section 13(1)(i-a) & (i-b) of the Hindu Marriage Act through her Power of Attorney and the Family Court at the same time is empowered to insist upon the personal appearance of the parties as and when required.

(iii) G.Yogeetha vs Sarvendiran in CRP Nos.4299 and 4301 of 2022 order passed before this Court on 12.01.2023, which reads as follows:

8. While-so, the Courts are expected to consider the plight of the case between the husband and the wife and pass orders as expeditiously as possible in mutual consent applications filed under Section 13-B of the Hindu Marriages Act, 1955.

9. Lengthy procedures for grant of consent divorce are unnecessary and several adjournments are not required.

10. In the present cases, 14 adjournments were granted despite the fact that the parties are ready and willing to cooperate for grant of COPY mutual divorce.

11. Considering the facts and circumstances, this Court, instead of issuing directions to the V Additional Family Court at Chennai to dispose of these matters, inclined to consider the petitions filed under Section 13-B of the Hindu Marriages Act, 1955, since the petitioner and the respondent have expressed their willingness and consent to consider the same by this Court in the present Civil Revision Petitions.



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12. Today Mr.V.S.Sharvendiran Somasundaram Sharvendiran appeared through Video Conferencing from Australia and has contended that he has no objection in allowing the petition for mutual consent and the Guardianship petition filed by the petitioner-wife. Petitioner wife Smt.G.Yogeetha @ Gajendranath Yogeetha appeared in person before this Court and consented for mutual divorce.

13. Considering the facts and circumstances and in order to avoid the process of undergoing unnecessary procedures again before the Family Court and considering the fact that both the parties have expressed their consent for mutual divorce and to grant custody of the minor child to the petitioner-wife, this Court is inclined to pass the following orders by invoking the powers under Article 227 of the Constitution of India and in the interest of justice:-

(1) The marriage solemnised between the petitioner and the respondent on 09.02.2017 stands dissolved.

(2) The petitioner Smt.G.Yogeetha @ Gajendranath Yogeetha is appointed as the sole Guardian of the minor girl child Ms. Yashvi Sharvendiran born on 17.06.2019. Consequently, the petitioner-wife is entitled for the custody of the minor girl child.

(3) In view of the relief granted in these Civil Revision Petitions, the adjudication in the above Original Petitions, namely, OP Nos.113 and 107 of 2022 pending on the file of the V Additional Family Court at Chennai became unnecessary and consequently HMOP No.107 of 2022 and GWOP No.113 of 2022 are struck off.



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6. Learned counsel for the respondent further submitted that this Court may grant divorce and 6 month period was already over and she, being in abroad and not able to attend the Court but gave power of attorney which was not accepted by Court below.

7. Today, when the matter is taken up for hearing, the petitioner/wife appeared through video conferencing from USA and prayed to recognize the Power of Attorney as Kruthika Palanichamy and to accept the cause title and also prayed either to dispose of H.M.O.P.No.3643 of 2022, pending before the Principle Family Court, Chennai, in a time bound manner or grand divorce by this Court as per ratio relied in the above referred authority.

8. The respondent/husband also appeared in person before this Court and consented for mutual divorce. As both parties mutually consented for divorce, and it needs to disposed as expeditiously as possible. If not, they



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need be unnecessarily harassed, the concept of mutual divorce will be defeated.

9.Considering the facts and circumstances, this Court, instead of issuing directions to the learned Principal Family Judge, Chennai to dispose said HMOP by invoking Article 227 of the Constitution of India, is inclined to consider the petition filed under Section 13-B of the Hindu Marriage Act, 1955, since the petitioner and the respondent have expressed their willingness for Divorce by mutual consent by this Court in the present Civil Revision Petition. They have no issues and they agreed not to claim any maintenance and not to claim any property in future. The issues between the parties are completely settled and already, they are living separately and the respondent/husband aged about 33 years wanted to get separated, and requested that the order may passed accordingly. They have settled in their life independently much earlier, so they agreed for divorce by mutual consent. But they are not able to get decree due to the lethargic attitude of the Court below Dictum followed in CRP.No.4299 of 2022 also supported the case of the petitioner.



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10. Hence this Court in the interest of justice is inclined to pass the following order by invoking Article 227 of the Constitution of India:-

(i) the marriage solemnized between the petitioner and the respondent on 29.08.2016 hereby stands dissolved.

(ii) In view of the relief granted in this Civil Revision Petition, the adjudication in H.M.O.P.No.3643 of 2022, pending on the file of the Principle Family Court, Chennai, has become unnecessary and the same is ordered to be struck off.

11. Accordingly, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

06.04.2023

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation: Yes/No

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To

1.The Principal Judge, Family Court, Chennai.

2. The Section Officesr, VR-Section,
High Court of Madras.

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T.V.THAMILSELVI, J.

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