



CRP No.2955 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.09.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

Civil Revision Petition No.2955 of 2023

H.Shabbir Sharif

...Petitioner

Vs.

R.Sheerin Fathima

...Respondent

Civil Revision Petition filed under Article 227 of the Code of Civil Procedure to set aside the order dated 11.01.2023 made in O.S.SR.No.234 of 2023 on the file of the learned Principal District Judge, Chengalpet and direct the appropriate court to take the case on file and number the same.

For Petitioner : Mr.K.D.Arunkumar

ORDER

The present petition has been filed to set aside the order dated 11.01.2023 made in O.S.SR.No.234 of 2023 on the file of the learned Principal District Judge, Chengalpet and direct the appropriate court to take the case on file and number the same.

2. The brief facts of the case are as follows:-



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The petitioner, who is the plaintiff has preferred O.S.SR No.234 of 2023 seeking to pass a decree to declare the 'Talak' issued by the petitioner / plaintiff as valid and binding upon the respondent and to grant such other suitable reliefs. The said suit was rejected by the court below on the ground not maintainable, hence this Revision.

3. The learned counsel for the petitioner would submit that the court below had returned the plaint with a direction to file in the appropriate court, however, without a specific direction to the specific court is against the principles of natural justice. Further, the Family Court, Chengalpet has also returned the plaint, the court below did not exercise its discretion, which has caused serious prejudice to the petitioner, thereby pleaded to allow the present Revision.

4. Heard the learned counsel for the petitioner and perused the documents placed on record.

5. On perusal of the affidavit filed by the petitioner and the order passed by the court below, it is seen that the learned Principal District Munsif, Alandur has returned the plaint pointing out certain defects on 31.10.2022 and the learned counsel for the petitioner / plaintiff has complied with the said defects and represented to the Family Court,



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Chengalpattu. Thereafter, the said plaint was again returned by the Family Court, Chengalpattu on 28.11.2022 seeking a reason as to '*How the petition maintainable as per Tamilnadu Government Gazette Notification VI dated 11.12.2013*' and the same was complied with by the learned counsel for the petitioner and represented. Again, the learned Principal District Judge, Chengalpattu returned the plaint stating that '*how the suit is maintainable under Section 15 of CPC and directed to present the plaint before the proper court, having jurisdiction.*' Left with no other option, the petitioner has come up with the present petition.

6. At this juncture, it is relevant to point out the Judgment rendered by the Hon-ble Division Bench of High of Kerala, Ernakulam in Mat.Appeal.72/2021, OP (FC).372/2020, OP (FC).124/2021, OP (FC).133/2021 etc., batch dated 09.04.2021, wherein the Hon-ble Division Bench has categorically dealt with the said cases and the Jurisdiction of Family Court in matters Related to Extra Judicial Divorce was extensively dealt with. Also, this Court being bound by the said Judgment is inclined to follow the same by quoting the relevant provisions, which are applicable to the facts and circumstances of the present case on hand.

“76. ...In the matter of talaq, khula, mubaraat, talaq-e-tafwiz, the Family Courts shall entertain such applications moved by either of the parties or both parties to declare the marital status of such parties. In the matter of unilateral



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dissolution of marriage, invoking khula and talaq, the scope of inquiry before the Family Courts is limited. In such proceedings, the court shall record the khula or talaq to declare the marital status of the parties after due notice to other party. If any person want to contest the effectiveness of khula or talaq, it is open for such aggrieved person to contest the same in appropriate manner known under law. In the matter of mubaraat and talaq-e-tafwiz, on being satisfied that the dissolution is being effected on Mutual consent, the Family Court without further inquiry shall declare the marital status. We notice Family Courts are overburdened with large number of cases. The Family Court therefore, shall restrain from adjudicating upon such extra judicial divorce unless it is called upon to decide its validity in appropriate manner. The Family Court in such matters shall endeavour to dispose the cases treating it as uncontested matter, without any delay by passing a formal order declaring the marital status.

Further, the same was also followed by this Court earlier, while dealing with CRP No.1641 of 2021 dated 21.04.2021.

7. As far as the present case on hand, as per the aversion of the petitioner, right from the date of marriage the petitioner and the respondent were not living happily, viz., 20.12.2018. the learned Principal District Munsif, Alandur, Family Court, Chengalpattu and Principal District Judge, Chengalpattu has refused to entertain the petition in the light of provisions under Section 7(1)(b) Family Court Act; as per Tamilnadu Government Gazette Notification VI dated 11.12.2013 and under Section 15 of CPC



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respectively. It is just and necessary to extract the relevant provisions of G.O.Ms.No.1136 dated 11.12.2013 wherein in Notification VI it is mentioned as follows:-

“In exercise of the powers conferred by clause (b) of Sub Section (1) of Section 3 read with sub-section (2) of Section 3 of the Family courts Act, 1984 (Central Act 66 of 1984), the Governor of Tamilnadu, after consultation with the High Court of Madras, hereby establishes a Family Court at Chengalpattu with effect from the date of assumption of charge of the Judge of the said Court and also hereby specifies that the jurisdiction of the said Family Court shall extend to the local limits of the Chengalpattu Taluk, inclusive of Chengalpattu Town.”

8. As already mentioned supra the court below, in such circumstances, is neither called upon to adjudicate nor called upon to dissolve the marriage by decree of divorce. On the other hand, the Family Court only has to declare the marital status invoking jurisdiction under Explanation (b) of Section 7(1) of the Family Courts Act. Once a declaration of divorce is produced before the Family Court, the Family Court has to pass a decree declaring the matrimonial status of the parties. Hence, this Court is of the considered view that the Family Court is bound to entertain a petition.

9. In view of the above, the order passed by the learned Principal District Judge, Chengalpattu in O.S.Sr.No.234 of 2023 dated 11.01.2023 is



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set aside and the Family Court, Chengalpattu has appropriate jurisdiction.

Therefore, the petitioner is directed to approach the Family Court, Chengalpattu and the said Court is hereby directed to take up the matter and dispose of the same without any further delay treating it as an uncontested matter in the light of the guidelines issued by the Hon-ble Division Bench, High Court of Kerala, Ernakulam in the Mat.Appeal No.72/2021 OP (FC) 372/2020, OP(FC) 124/2021 OP (FC) 133/2021 etc., batch dated 09.04.2021.

Accordingly, the present Civil Revision Petition is allowed. Registry is directed to return the original plaint to the learned counsel for the petitioner. No costs.

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Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order

To

1. The Principal District Judge,
Chengalpattu
2. The Family Court,
Chengalpattu
3. The Principal District Munsif,
Alandur

V.BHAVANI SUBBAROYAN J.



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ssd

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