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C.R.P.No.4314 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4314 of 2022

1.Emmanuel Kannan
2.Dr.Daisy Dhanaseeli

... Petitioners

Vs.

Respondent

... None

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the docket order dated 21.09.2022 passed in OP.Sr.No.6669/2022 by the Principal District and Session Court, Chengalpattu and consequently direct the said Court to number the OP.SR.No.6669 of 2022 and decide the mutual divorce petition filed under Section 10A of the Divorce Act, 1869 and to pass any further order or orders as this Hon'ble Court.

For Petitioners

: Mr.P.Ayyamperumal

**ORDER**

The Civil Revision Petition has been filed, questioning the Docket order dated 21.09.2022 passed in OP.Sr.No.6669/2022 on the file of the Principal District and Sessions Court, Chengalpattu and consequently direct the said Court to number the OP.SR.No.6669 of 2022 filed for mutual divorce between the petitioners.

2. The petitioners are husband and wife, jointly presented a mutual divorce petition under Section 10A of the Divorce Act, 1869. The Principal District Court, Chengalpattu, returned the divorce petition on the ground that the first petitioner/husband is residing at Secunderabad, Telangana and therefore, the Principal District Court at Chengalpattu has no jurisdiction to entertain the mutual divorce petition filed under Section 10A of the Divorce Act, 1869.

3. Perusal of the mutual divorce petition filed by the petitioners reveal that the marriage between them was solemnized on 11.10.2013 at All Saints Church, Trimulgherry, Secunderabad as per the Christian Rites and Customs. A male child born from and out of the wedlock on 07.07.2014 and now with the custody of the second petitioner/mother. It is contended that



both the petitioners are living separately for more than 2 years and they are not interested in continuing the matrimonial relationship and had taken a decision to apply mutual divorce petition under Section 10A of the Divorce Act, 1869.

4. The Principal District Court, Chengalpattu, returned the papers merely on the ground that the application is to be presented before the competent Court at Secunderabad, Telangana.

5. The learned counsel for the petitioners mainly contended that under Section 45 of the Divorce Act, 1869, Code of Civil Procedure is to be applied, when there is a doubt regarding the jurisdiction of the Courts. Section 45 of the Divorce Act enumerates that all proceedings under the Divorce Act between the parties shall be regulated by the Code of Civil Procedure, 1908. In the present case, there was no possibility for residing jointly by the petitioners at Chennai and the second petitioner/wife is residing at Pallavaram, Chennai, falling within the territorial jurisdiction of the Principal District Court at Chengalpattu.

6. The learned counsel for the petitioners relied on the judgment of the



High Court of Bombay in the case of ***Hariram Dhalumal Karamchandani Vs. Jasoti***, reported in ***AIR 1963 Bom 176***, wherein the Bombay High Court made the following observations:

“10. It may be noted that Section 45 of the Indian Divorce Act is almost identical in terms with Section 21 of the Hindu Marriage Act, which provided that “subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure”.

Thus, in this case, where the provision as to jurisdiction specifically contained in Section 19 of the Hindu Marriage Act, viz., the place of solemnization of marriage or place of residence of husband and wife, either separately or together, within the jurisdiction of the Court is impossible of satisfaction, in my opinion, the provisions of Section 20 of the Code of Civil Procedure are sufficient to create jurisdiction in the ordinary CMI Court at a place where either the defendant resides or the cause of action is said to arise.”

7. With reference to the facts and circumstances and in view of Section 45 of the Divorce Act, 1869, the cause of action and the maintainability of the mutual divorce petition filed by the parties are to be considered under Section 20 of the Code of Civil Procedure. As per Section



20 (b) and (c) of the Code of Civil Procedure, the second petitioner/wife is residing at Pallavaram, Chennai, falling within the territorial jurisdiction of the Principal District Court, Chengalpattu and therefore, the petitioners have established the cause of action for the purpose of entertaining the mutual divorce petition filed under Section 10A of the Divorce Act, 1869.

8. Section 10A of the Divorce Act provides Dissolution of Marriage by mutual consent. Sub-Section 1 to Section 10A of the Divorce Act stipulates that *'subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Indian Divorce (Amendment) Act, 2001 (51 of 2001), on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved'*.

9. Therefore, the petitioners herein have filed a petition under Section 10A of the Divorce Act as there is no possibility for reunion and a decision



was taken to get divorce by way of mutual consent. With reference to the petition filed under Section 10A of the Divorce Act, Section 45 of the Divorce Act is to be applied in respect of the present case, in view of the fact that the second petitioner/wife is residing at Pallavaram, Chennai within the territorial jurisdiction of the Principal District Court, Chengalpattu. Therefore, under Section 20 (b) and (c) of the Code of Civil Procedure, the petition is to be entertained, since the mutual divorce petition was filed jointly by the husband and wife.

10. The Docket order, which is impugned in the present revision petition reveals that there is no specific reason assigned for the purpose of returning the mutual divorce petition filed by the petitioners. Thus, this Court is inclined to consider the present Civil Revision Petition.

11. Accordingly, the Docket order dated 21.09.2022 passed in OP.Sr.No.6669 of 2022 on the file of the Principal District and Sessions Court, Chengalpattu is set aside and the Principal District and Sessions Court, Chengalpattu is directed to number the OP.Sr.No.6669 of 2022, if the papers are otherwise in order and accordingly, dispose of the same by following the procedures as contemplated.



12. With these directions, the Civil Revision Petition stands allowed.

No costs.

02.01.2023

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Index : Yes

Speaking order: Yes

Neutral Citation: Yes

To

The Judge,
The Principal District and Sessions Court,
Chengalpattu.



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S.M.SUBRAMANIAM, J.

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