



C.R.P(MD)No.605 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.03.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.605 of 2023

and

C.M.P(MD)No.2786 of 2023

R.Abdul Rahman

... Petitioner/Petitioner/
Plaintiff

Vs.

R.Afiya Shifana

... Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the impugned fair and decreetal orders in I.A.No.1 of 2022 in O.S.No.3 of 2022, dated 16.12.2022 on the file of Family Court, Pudukottai.

For Petitioner : Mr.P.M.Vishnuvarthan

ORDER

The petitioner is the plaintiff in O.S.No.3 of 2022 before the Family Court, Pudukottai. In the aforesaid proceedings, the petitioner has filed an application under Order 23 Rule 1(3) of C.P.C. Though the



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petitioner has not clearly stated that the petition filed for withdraw the suit to file a fresh suit, it has been stated by the petitioner that the law has changed and in view of the above, the petitioner would seek leave of the Court to file fresh proceedings to divorce the respondent/wife. It is submitted that in terms of the decision of the Hon'ble Supreme Court in suo motu W.P.No.2 of 2015, dated 22.08.2017, the Hon'ble Supreme Court laid down the law relating to triple talaq. Therefore, the petitioner would like to explore the possibility of annulling the marriage/divorce the respondent/wife in terms of the law clarified by the Hon'ble Supreme Court.

2. The respondent appears to have filed a counter before the Family Court in I.A.No.1 of 2022 filed by the petitioner under Order 23 Rule 1(3) of C.P.C.

3. The case of the petitioner is that the Family Court ought to have granted leave to withdraw the suit in the light of the changed circumstances in view of the declaration of law by the Hon'ble Supreme Court suo motu W.P.No.2 of 2015 on 22.08.2017.



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4. Considering the arguments advanced by the learned counsel for the petitioner and I also perused the impugned order passed by the Family Court in I.A.No.1 of 2022 in O.S.No.3 of 2022.

5. Order XXIII Rule 1(3) of C.P.C. reads as under:-

"Withdrawal of suit or abandonment of part of claim:-

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim.

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2)....

(3) Where the Court is satisfied-

(a) That a suit must fail by reasons of some formal defect, or

(b) That there are sufficient grounds for allowing the plaintiff to institute a



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fresh suit for the subject matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim."

6. There are two limbs to Order XXIII Rule 1(3) of C.P.C. On being satisfied that the suit must fail by reasons of some formal defect, the Court may allow the plaintiff to withdraw the suit on such terms as it thinks fit and grant the plaintiff a permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.

7. In the alternative, the Court can also allow the plaintiff to institute a fresh suit for the subject matter of a suit or the part of the claim, where there are sufficient grounds for allowing the plaintiff to institute a fresh suit. Again, it has to be on such terms as it thinks fit. The Court can grant to the plaintiff a permission to withdraw from such



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suit a such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such or such part of the claim.

8. In this case, the family Court has concluded that plaintiff has to state sufficient grounds for permitting the petitioner/plaintiff to file a fresh suit though it referred to two decisions of the Hon'ble Supreme Court. The Court has erred in declining the relief to the petitioner under Order 23 Rule 1 (3) of C.P.C. In my view, the Court committed an error in declining the petitioner to withdraw the suit. The petitioner has a right to withdraw the suit to work out his remedy. The impugned order is therefore liable to be set aside and the case is remitted back to the family court to decide the issue afresh after giving a liberty to the petitioner to file a better affidavit in I.A.No.1 of 2022.

9. In view of the above, the civil revision petition stands allowed by way of remand with the above liberty to the petitioner to file better affidavit in support of I.A.No.1 of 2022 in O.S.No.3 of 2022 before the family Court, Pudukottai. The family Court, Pudukottai shall thereafter give liberty to the respondent to file counter and thereafter pass fresh orders on merits and in accordance with law within a period of six



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months from the date of receipt of copy of this order. No costs.

consequently, connected miscellaneous petition is closed.

06.03.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1.The Family Court, Pudukottai.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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