



WEB COPY

C.R.P(MD)/



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1324 of 2022

and

C.M.P(MD)No. 5458 of 2022

M.Saminathan

... Petitioner/Respondent

-vs-

T.G.S.Rachel Kency

... Respondent/Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the petition filed by the respondent herein/petitioner in I.D.O.P.No.183 of 2022 on the file of the learned Family Court, Kanniyakumari at Nagercoil and struck off the same.

For Petitioner : Mr.M.Suri

For R2&R3 : Mr.N.Dilipkumar

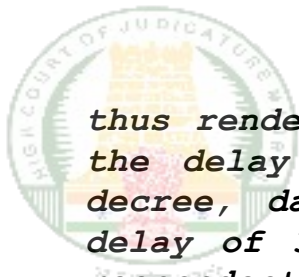
O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

2.I have perused the Court records and also perused the impugned order.

3.The respondent/wife has filed a petition in I.D.O.P.No.249 of 2018 before the District Court, Kanniyakumari District, Nagercoil, for restitution of conjugal rights and the same was transferred to the Family Court, Kanniyakumari, Nagercoil and now renumbered as I.D.O.P.No.183 of 2022.

(*)"4.The Court record also indicates that the petitioner/husband herein had filed I.D.O.P.No.259 of 2016 before the Principal District Judge, Coimbatore. The respondent/wife had participated in the proceedings and had also filed counter. Thereafter, P.W.1 was examined. However, the respondent failed to cross-examine P.W.1 in IDOP No.259 of 2016. It appears an ex-parte order was passed against the respondent on 23.10.2017 and thereafter, ex-parte decree came to be passed, on 08.11.2017, thereby, severing the matrimonial relationship that existed between the petitioner and the respondent. The attempt of the respondent to set aside the ex-parte decree dated 08.11.2017 is



thus rendered in futile. An application has been filed to set aside the delay in filing the application to set aside the ex-parte decree, dated 08.11.2017 passed in I.A.No.613 of 2018 with the delay of 313 days, which was dismissed on 14.03.2019. Since the respondent has not taken further steps to set aside the order passed in I.A.No.613 of 2018, ex-parte decree passed by the trial Court in I.D.O.P.No.259 of 2016 on 08.11.2017 it has attained finality. There is no matrimonial relationship subsisting as on date in the eye of law between the petitioner and the respondent. Therefore, there is no purpose in continuance of I.D.OP.No.183 of 2022 filed by the respondent for restitution of conjugal rights.

"5. In view of the above, the present Civil Revision Petition is allowed. However, liberty is given to the respondent to work out his remedy against the order passed in I.A.No.613 of 2018 in I.D.O.P.No.259 of 2016 in accordance with law. No costs. Consequently, connected miscellaneous petition is closed."

Sd/-

Assistant Registrar(CS III)

(*) Deleted and Substituted as per the order of this court dated 06.06.2023 made in CRP(MD).1324/2022.

Sd/-

Assistant Registrar(CS III)

// True Copy //

/06/2023

Sub Assistant Registrar(CO)

To:

To be substituted to the order which is already despatched on 01.06.2023

1. The Judge, Family Court,
Kanniyakumari, Nagercoil.
2. The Principal District Judge, Coimbatore.

Copy to

The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.M.SURI, Advocate (SR-18105[F] dated 29/03/2023)

C.R.P(MD) No.1324 of 2022

and

C.M.P(MD) No. 5458 of 2022

28.03.2023

KB(30.05.2023) 2P 6C

MK(16.06.2023) 2P 6C

<https://www.mhc.tn.gov.in/judis>