



C.R.P(MD)No.789 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.02.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.789 of 2020

K.Raja Boopathi

... Petitioner/Husband

Vs.

N.Sumathi

... Respondent/Wife

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to peruse the records pertaining to the Docket Order passed in the unnumbered HMOP No. ---of 2020 in A.No.1061 dated 24.08.2020 passed by the learned Subordinate Judge, Paramakudi, Ramnad District, set aside the same with a consequential direction to number the said HMOP and to proceed further in accordance with law.

For Petitioner : Mr.C.Jaganathan

For Respondent : Mr.J.Anand Kumar



C.R.P(MD)No.789 of 2020

ORDER

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The present revision petition has been filed by the husband challenging an order passed by the learned Subordinate Judge, Paramakudi refusing to number H.M.O.P on the ground that a second H.M.O.P is not maintainable.

2. The admitted facts are as follows:

(i) The husband had filed H.M.O.P.No.55 of 2013 on the file of Sub Court, Paramakudi for the relief of divorce on the ground of cruelty and desertion. The said petition was dismissed on merits on 22.04.2016. The husband had filed H.M.C.M.A before Principal District Court, Ramanathapuram with a delay of 12 days.

(ii) The wife had initiated maintenance case in M.C.No.12 of 2014 before Judicial Magistrate, Mudukulathoor. The said M.C was referred to Lok Adalat and both the parties had agreed for a re-union. Based upon the said Lok Adalat award, the petitioner had made an endorsement that the condone delay application in I.A.No.10 of 2016 in filing H.M.C.M.A may be closed. The husband filed I.A.No.136 of 2018 under Order 41



C.R.P(MD)No.789 of 2020

Rule 19 to restore H.M.C.M.A. The said application was dismissed for default. In order to restore the same, the petitioner/husband had filed I.A.No.104 of 2019. The said application was dismissed on 19.11.2019 on the ground that since the parties have entered into compromise before the Lok Adalat, the request of the petitioner for re-hearing would not arise. This order in I.A.No.104 of 2019 has not been challenged by the husband.

(iii) The husband has filed a fresh H.M.O.P before Sub Court, Paramakudi alleging that 2 months after re-union, the wife has deserted him and she has threatened the husband with dire consequences through some of her relatives and hence, a police complaint has been lodged as against the wife and her relatives. According to the learned counsel appearing for the petitioner/husband, in view of fresh cause of action, the petitioner had filed a fresh H.M.O.P for divorce on the ground of cruelty and desertion in the year 2020.

(iv) The learned Subordinate Judge, Paramakudi has returned the H.M.O.P on the ground that the previous attempt made by the husband for divorce was unsuccessful and his attempt to revive the appeal was



C.R.P(MD)No.789 of 2020

also unsuccessful. That apart, no change of circumstances have arisen between husband and wife to file a second divorce petition. On the above said grounds, the learned Subordinate Judge, Paramakudi has returned the H.M.O.P presented by the husband under the impugned order, dated 24.08.2020. The said order is under challenge in the present revision petition.

3. According to the learned counsel appearing for the petitioner, consequent to the Lok Adalat award, the petitioner and his wife had re-joined and thereafter, the wife had again deserted the husband. He further contended that the wife through some of her relatives had threatened the husband and hence, he was constrained to lodge a police complaint. The police authorities have refused to interfere in the said matter and have advised the petitioner to approach the appropriate Court. Hence, he has filed the present H.M.O.P. According to the learned counsel for the petitioner, the cause of action for the present H.M.O.P had arisen after the award of the lok adalat.

4. Per contra, the learned counsel for the respondent/wife had contended that once the petitioner had filed a divorce petition and he was



C.R.P(MD)No.789 of 2020

unsuccessful, thereafter, on the same cause of action, the husband cannot be permitted to file a second divorce petition. He further contended that as per the lok adalat award, the parties have re-joined and the attempt made by the husband to revive the appeal was also unsuccessful. The husband has not placed on record any new material giving raise to a fresh cause of action for filing a second divorce petition. Therefore, according to the learned counsel appearing for the respondent/wife, the present H.M.O.P has been rightly returned by the learned Sub Ordinate Judge, Paramakudi on the ground that it is not maintainable.

5. I have carefully considered the submissions made on either side and perused the records.

6. It is an admitted fact that the petitioner/husband had initiated H.M.O.P .No.55 of 2013 for divorce before Sub Court, paramakudi and the same was dismissed on 22.04.2016. When his first appeal was pending before Principal District Court, Ramanathapuram, there was a lok adalat award, in which the parties have agreed to live together. Based upon the said lok adalat award, the petitioner has not pursued the condone delay application. Thereafter, according to the petitioner, the



C.R.P(MD)No.789 of 2020

wife has deserted him and has indulged in attacking the petitioner through some anti-social elements. Therefore, he made a second attempt to revive the appeal and the same was also not successful.

7. It could be seen from Paragraph No.11 of the present H.M.O.P that the husband and wife had re-joined after the lok adalat award and after 2 months thereafter, the wife had deserted the husband. It could be also seen that there are averments that the wife had threatened the husband and the husband has lodged a police complaint. The cause of action also reveals the same. The complaint lodged before Sikkal police station has been shown as Document.No.10 along with the list of documents enclosed with the H.M.O.P.

8. It is settled position of law that a second divorce petition cannot be filed on the same cause of action. However, if the petitioner is able to establish that a fresh cause of action has arisen, he will be entitled to file a second H.M.O.P for divorce. The cause of action has to be assessed by the Court only from the pleadings of the petitioner and not from the counter or by the arguments of the other side. As per the pleadings found in the H.M.O.P, the wife is alleged to have deserted the husband after lok



C.R.P(MD)No.789 of 2020

adalat award. It is also alleged that wife has engaged some anti-social elements to attack the husband and a police complaint was lodged.

Therefore, it is clear that the plaint averments reveal that some cause of action has arisen after the lok adalat award. However, it is clear that the petitioner can never rely upon any cause of action that has taken place before the passing of the lok adalat award to prosecute the present H.M.O.P.

9. In view of the averments made in the present H.M.O.P relating to the fresh cause of action after passing of the lok adalat award, I find that the petitioner has made out a *prima facie* case for numbering the present H.M.O.P. However, it does not preclude the respondent/wife from raising all the pleas before the learned Subordinate Judge, Paramakudi at the appropriate time.

10. The revision petitioner is at liberty either to present the same H.M.O.P which is filed along with this revision petition or with amendments before Sub Court, Paramakudi.



C.R.P(MD)No.789 of 2020

11. With the said observations, the learned Subordinate Judge, Paramakudi is directed to number the H.M.O.P and proceed in accordance with law. With the said observations, this Civil Revision Petition stands Allowed.

21.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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Note : Registry is directed to return the original H.M.O.P filed along with this petition to the revision petitioner.

To

- 1.The Sub Court,
Paramakudi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR ,J.

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C.R.P(MD)No.789 of 2020

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