



C.R.P.(MD)No.2121 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.2121 of 2019
and
C.M.P(MD) No.11083 of 2019

Pandeeswari

... Petitioner/Petitioner/
Respondent

-vs-

R.Annadurai

... Respondent/Respondent/
Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.09.2019 passed in I.A.No.28 of 2019 in H.M.O.P.No.33 of 2019, on the file of the Sub Court, Mudukulathur.

For Petitioner : Mr.C.M.Arumugam

For Respondent : Mr.G.Anbu Saravanan



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ORDER

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The instant Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.09.2019 passed in I.A.No.28 of 2019 in H.M.O.P.No.33 of 2019, on the file of the Sub Court, Mudukulathur.

2. The revision petitioner herein is the petitioner before the trial Court, and the respondent herein is her husband.

3. A few facts which are necessary for considering this application are follows:

It appears that the respondent/husband has filed an application for the relief of divorce on the ground of adultery in H.M.O.P No.10 of 2007. Wherein, the trial Court has disbelieved the statement of the husband and dismissed the divorce application vide order, dated 16.11.2010. It appears that, subsequently, the husband has filed another application in H.M.O.P.No. 33 of 2019, wherein, apart from the ground of adultery, he also raised another grounds for seeking divorce namely, desertion, cruelty etc. While so, in the



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trial Court, the wife/petitioner has filed an application to reject the plaint under Order 7 Rule 11 of C.P.C on the ground that the subsequent H.M.O.P.No.33 of 2019 is hit by the principle of *res judicata*.

4. The learned counsel for the revision petitioner by relying the judgment reported in **1998 (3) SCC 573 (K.K.Modi vs. K.N.Modi and others)**, has contended that the very attempt of the petitioner herein is nothing but a re-litigation. Therefore, the learned counsel for the petitioner would submit that the very order passed by the learned trial Judge, dismissing the application of rejection of the petition under Order 7 Rule 11 of C.P.C is liable to be interfered with.

5. However, the learned counsel for the respondent would submit that, the subsequent application in H.M.O.P.No.33 of 2019 has been filed on different set of cause of action, though certain factual aspects of the earlier petition has been mentioned in the subsequent divorce. It is the submission of the learned counsel for the respondent that even after the dismissal of earlier divorce petition, the petitioner/wife did not come forward to live with the respondent/husband. Therefore, the same could give fresh cause of action to



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file an application under the ground of desertion. He also would further submit that the allegations contained in the counter statement would also give a fresh cause of action for him to seek for a divorce on the yet another ground of cruelty. Therefore, he would further submit that the subsequent application in H.M.O.P.No.33 of 2019 is not hit by the principle of *res judicata*.

6. This Court has carefully gone through both the petitions.

7. While the perusal of the averments made in the both petitions, this Court could be able to find that, the earlier application was filed one and the only ground i.e., adultery. But that ground was disbelieved by the trial Court. Hence, in the subsequent suit, the petitioner, apart from the ground of adultery, has also dealt about the subsequent fresh cause of action which had happened after the dismissal of the earlier divorce application in H.M.O.P.No. 33 of 2019.

8. From the averments of the petition, this Court could be able to see that, the respondent/husband has filed the subsequent application on the



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ground of desertion since the petitioner did not return to matrimonial home and live with him. Thus, from the averments of the petition, this Court could not find any material to bring the case within the purview of Section 11 of the C.P.C. Further the ruling submitted by the learned counsel for the petitioner though speaks about the re-litigation, in other words, *res judicata*, this Court could not find any basis for *res judicata* from the statement of the plaint. Therefore, the facts of the referred judgment are not applicable to this case.

9. At this juncture, this Court would like to refer the latest judgement of the Hon'ble Apex Court reported in **2021 (9) SCC 99 (Srihari Hanummandas Totala vs. Hemant Vithal Kamat and others)**, wherein, when the issue of *res judicata* raised as ground for rejection of plaint under Order 7 Rule 11 (d) of C.P.C, then the pleadings of the earlier case is essential. For that the earlier petition to be seen. But such exercise will not come with in the frame work of Order 7 Rule 11 (d) and ultimately dismissed the application. The above referred judgment is squarely applicable to this case.



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10. Therefore, the instant Civil Revision Petition is dismissed.

However, considering the pendency of matrimonial issue, since 2019, this Court deem it appropriate to direct the Court below to dispose of the case as expeditiously as possible. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

11.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Sub Court,
Mudukulathur.



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C.KUMARAPPAN,J.

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