



CRP No.2720 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP No.2720 of 2024

M.A.Mumtaj Surya : Petitioner

versus

Moodurai Poyyamozhi : Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order of return dated 19.12.2023 passed in I.A.No.Nil of 2023 in HMOP.No.220 of 2022 by the learned Subordinate Judge, Tirupattur.

For Petitioner
(Party in person) : Ms.M.A.Mumtaj Surya

ORDER

This civil revision petition arises against the order of the learned Subordinate Judge, Tirupattur in I.A.No. Nil of 2023 in HMOP.No.220 of 2022.



CRP No.2720 of 2024

WEB COPY

2. HMOP.No.220 of 2022 has been filed by the civil revision petitioner seeking for divorce. She has invoked the provision of Section 13(1)(a) of the Hindu Marriage Act.

3. Pending the disposal of HMOP, she took out an application under Section 27 of the Hindu Marriage Act. She sought for a direction that the respondent to return a sum of Rs.10,00,000/- paid as “lease amount” by her father. Pleading that it is Streedhana money, the petitioner felt it is liable to be returned in terms of Section 27 of the Act.

4. The learned Trial Judge, without numbering the application, has rejected it stating that it is not maintainable. Aggrieved by the same, the present revision has been filed.

5. I have heard Ms.Mumtaj Surya, party-in-person. She would rely upon several authorities for the purpose of pleading that the petition is maintainable.

6. This Court in *Selvaraj v. Koodankulam Nuclear Power Plant*



CRP No.2720 of 2024

India Limited, (2021) 4 CTC 539 has held that the Court cannot decide about the maintainability of a petition at the SR stage itself. The learned Judge held that in order for an application to be dismissed as not maintainable, the Court should number the application, hear the respondent and thereafter, enter upon a judicial verdict.

7. A perusal of the petition in I.A.SR3596 of 2023 dated 03.07.2023 would show that the learned Judge has decided on the merits of the case even prior to numbering.

8. Following the judgment of Mr.Justice N.Seshasayee cited supra, the order dated 19.12.2023 passed in I.A.No.Nil of 2023 in HMOP.No.220 of 2022 is set aside. The learned Subordinate Judge, Tirupattur shall number the application filed under Section 27, if it is otherwise in order. The court shall receive the counter from the respondent, if he files one and thereafter, proceed to decide on the application in accordance with law.

9. At the time of dealing with the application, I am sure that the



CRP No.2720 of 2024

learned Trial Judge will take into consideration the view expressed by the Bombay High Court in **Sangeeta Balkrishna Kadam v. Balkrishna Ramchandra Kadam**, AIR 1994 Bom 1, and the view expressed by this Court in **V.N.Jaganathan v. A.R.Srividhya**, (1997) 2 MLJ 366.

10. The consistent view of the courts has been when a matrimonial relationship comes to an end, the Court has the power not only to pass an order regarding custody of children if any, but also with respect to the properties. It would be unfair to push a party to a matrimonial dispute by filing a fresh suit all over again. All matters between the parties must be settled by the matrimonial court itself. In case, Section 27 does not strictly apply, recourse can always be taken to Section 151 of Code of Civil Procedure.

11. With the above directions, this civil revision petition is allowed.
No costs.

20.08.2024

nl

Index : Yes/No



CRP No.2720 of 2024

Speaking Order/Non-speaking order
Neutral Citation : Yes/No

To

The Subordinate Judge, Tirupathur.



WEB COPY



CRP No.2720 of 2024

V.LAKSHMINARAYANAN, J.

nl

CRP No.2720 of 2024

20.08.2024