



C.R.P.(PD) No.2621 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

C O R A M

THE HONOURABLE MR. JUSTICE M. NIRMAL KUMAR

C.R.P.(PD).No.2621 of 2024
and C.M.P.No.13778 of 2024

Dr. Senthil Kumar Elangovan

... Petitioner

Versus

Dr.Gnanakalyani

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India to direct the Family Court, Chennai, to number O.P.S.R.No.1591 of 2024 while O.P.No.3579 of 2015 remains pending.

For Petitioner : Ms.A.Arulmozhi

For Respondent :

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ORDER

The petitioner/husband had filed a petition under Section 13 B of Hindu Marriage Act, for mutual divorce from the respondent/wife. This



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petition was filed on 15.03.2024 and it was returned on 27.03.2024 for the

following reasons:-

O.P.SR.1591/24

27.03.2024 Returned

- 1. II petitioner photo to be affixed in this petition. Front page.***
- 2. Nature of document to be mentioned in list of document No.1***
- 3. Blanks to be filled up.***
- 4. OP - MC pending.***

2. The learned counsel for the petitioner submitted that in the mutual consent petition at paragraph No.6, sub-clause (8) it has been clearly mentioned that the petitioner had earlier filed a petition under Section 13 (1) (ia) of the Hindu Marriage Act on the ground of cruelty. That case is pending for almost nine years though both sides evidence completed and arguments advanced in April, 2024. Though arguments completed by either side, the case adjourned recording part-heard and the case is still pending. In the meantime, the petitioner and the respondent now come to mutual understanding to file a consent divorce petition.



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3. The Registry of the Family Court returned the petition copy, recording reasons, one of the reasons is that O.P. and M.C are pending. As regards, M.C.No.220 of 2023, the same disposed by order dated 22.12.2023. This fact not considered. As regards, O.P.No.3579 of 2015, it is clearly mentioned that the same is pending and it is filed under Section 13(1)(i-a) on the ground of cruelty.

4. The learned counsel for the petitioner further submits that pendency of O.P.No.3579 of 2015 is not a bar for the petitioner and respondent to file a petition, seeking divorce by mutual consent under Section 13-B of the Hindu Marriage Act. The petition ought to be taken on file and for better appreciation and to avoid contra decision, after numbering the mutual consent divorce petition, the same should be placed before the II Additional Family Court, where O.P.No.3579 of 2015 is pending.

5. Admittedly, the petitioner and the respondent had earlier filed a petition for divorce in O.P.No.3579 of 2015, which is pending before the II Additional Family Court, Chennai on the ground of cruelty and now the parties



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filed a petition for divorce by mutual consent. The apprehension of the petitioner is that after withdrawal of O.P.No.3579 of 2015, in the event of one of the parties withdrawing the mutual consent, again the petitioner will have to initiate from the beginning file petition for divorce, thereafter the case will be listed chronologically and it will take years to cross each stage, already nine years have passed for O.P.No.3579 of 2015 to reach the present stage. If petitioner to file fresh petition again in the event of any such eventuality, it will take another decade for the petitioner and for the respondent to get a relief.

6. In view of the same, by way of abundant caution, O.P.No.3579 of 2015 be kept as it is, despite the consent divorce petition filed by the parties. Only after the case is numbered and listed, both the parties can appear and give their consent before the Presiding Officer. Hence, filing of mutual consent petition by the petitioner, despite pending O.P.No.3579 of 2015, between the same parties is not a bar.

7. The Registry of Family Court is directed to entertain the petition filed in O.P.SR.No.1591 of 2024, if it is otherwise in order. After numbering O.P.SR.No.1591 of 2024, the same to be listed before the II Additional Judge, Family Court, Chennai, who shall list both the petition for divorce by mutual



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consent and O.P.No.3579 of 2015 and pass appropriate orders depending on the orders passed in one of the petitions, consequently, the other petition will get disposed.

8. It is also submitted by the learned counsel for the petitioner that the petitioner is presently employed in United Kingdom, as Cardiology Surgeon in Crux Hospital, U.K. The petitioner had come to Chennai, attempted to file a petition of divorce by mutual consent. In the meanwhile, he had to leave India since his leave expires and he had to return to U.K., hence, informed the respondent that his father Mr.R.Elangovan appointed as Power of Attorney to represent him and filed Interlocutory Application seeking permission to permit the petitioner to be represented by his father on his behalf. The same is also to be considered by the Family Court, Chennai, facilitating filing of petition by the petitioner and the respondent for divorce by mutual consent.

9. It is also submitted by the parties that the Registry of the Family Court is taking objection citing pendency of the other petitions filed on the ground of cruelty and for other reasons, which causes great difficulty for the parties, who have come to an understanding to file a petition, of divorce by



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mutual consent. Hence, it is submitted that a direction may be given to the Family Court. The Principal Family Court, Chennai, and Registry, Family Court, not to return the petitions on technical grounds, which only further create difficulty and harassment to the petitioners approaching the Family Court, which is against the purpose for which Family Courts are constituted.

10. In view of the same, the Family Court is directed not to raise any such objection and there is no bar to file a divorce by mutual consent petition under Section 13-B of Hindu Marriage Act, if any petition under Section 13 or other provisions is pending between the parties and the Family Court is directed to entertain the divorce by mutual consent petition and to dispose the same on merits.

With the above directions, this Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

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Note: Issue order copy on 18.07.2024



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To

The Family Court, Chennai.



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M. NIRMAL KUMAR, J.

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