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C.R.P. (PD) No.3184 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.3184 of 2024
and C.M.P.No.17035 of 2024

T.Sivasubramani

.. Petitioner

Versus

S.V.Priya Karunyaa

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 25.07.2024 passed in I.A.No.18 of 2024 in O.P.No.743 of 2023 on the file of the II Additional Principal Family Court, Chennai.

For the Petitioner : Mr.Suchit Anant Palande

For the Respondent : Mr.Arvind Subramaniam
for Ms.Lavanyavathi

ORDER

This Civil Revision Petition arises against the order dated 25.07.2024 passed by the learned II Additional Principal Judge, Chennai in I.A.No.18 of 2024 in O.P.No.743 of 2023.



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2. O.P.No.743 of 2023 had been presented seeking for a declaration that the marriage which took place on 30.10.2022 between the petitioner and the respondent is voidable, on account of non-consummation of marriage and on account of the fact that the consent of the wife had been taken under vitiating circumstances.

3. On service of summons, the respondent entered appearance and filed a detailed counter to the said petition. Thereafter, the parties went for trial. In the meantime, the husband had presented O.P.No.2346 of 2023 seeking for restitution of conjugal rights. By consent O.P.Nos.743 of 2023 and 2346 of 2023 were tried together. It is accepted by both the learned counsels that the evidence has been completed and the matters were now listed for arguments.

4. At that stage, the respondent-wife took out an application seeking to amend the provision of law alone, from Section 12 (1) (a) and 12 (1) (c) to Section 13 (1) (i-a) of the Hindu Marriage Act (in short 'the Act'). This application was received as I.A.No.18 of 2024. The learned Judge ordered notice in the application and the respondent – husband filed a detailed counter.



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Thereafter, the learned Judge allowed the application by the impugned order dated 25.07.2024 stating that no prejudice would be caused to the parties, by amending the provision of law, in the prayer portion. He further left it open to the Civil Revision Petitioner – husband to file an additional counter or additional proof affidavit, if he so desires. Hence, the present Civil Revision Petition.

5. Heard, Mr.Suchit Anant Palande, for the Civil Revision Petitioner and Mr.Aravind Subramaniam for the respondent.

6. At the very outset, Mr.Arvind Subramaniam, in clear and categorical terms, submits that his client does not intend to introduce any new facts in the divorce petition. He would state all that the respondent-wife seeks for is to amend the provision of law in the prayer portion.

7. Mr.Suchit Anant Palande would state that the husband went to trial on the basis of nullity and today, the wife cannot turn around the present petition on the ground of cruelty. He would add that 69 hearings have already gone by and when the entire evidence has been completed, the wife has taken



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out this application for amendment. He would rely upon the following Judgments,

(i) of this Court in ***K.Sekar Vs. A.Mageshwari*** (C.R.P. (PD) No.1007 of 2021 dated 30.04.2021,

(ii) of the High Court of Bombay in ***Vaishali Shrikant Arane Vs. Shrikant Pandir Arane*** (2021 SCC OnLine Bom 5026,

(iii) of the High Court for the states of Punjab and Haryana in ***Varun Singla Vs. Teena*** (CR No.1706 of 2016 dated 18.05.2017)

He would state that the application having been filed at the fag end of the litigation does not deserve any consideration.

8. Per contra, Mr.Arvind Subramaniam would state that no new facts having been introduced in the amendment petition and it does not change the frame of the suit. Therefore, he would plead that the revision be dismissed.

9. I have carefully analysed the submissions of both sides.



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10. The argument of Mr.Suchit Anant Palande that Section 12 of the Act, presupposes the absence of a marriage whereas, Section 13 of the very same Act presupposes the existence of marriage. Therefore, change in the provision of law would affect the case, which requires consideration.

11. Under Section 12, it is not the case where the petitioner refuses to accept the factum of marriage, but would plead that the marriage that has been entered into between the parties is voidable one. Even under Section 13 of the Act, the marriage is accepted but a plea of default on the part of the opposing party is raised and if accepted, the petitioner would plead that he or she is entitled for divorce.

12. The submissions of Mr.Suchit Anant Palande that Section 12 does not accept marriage and Section 13 does, is not acceptable, since in both the cases, the factum of marriage is accepted but the circumstances that the petitioner would have to prove are different.

13. In so far as the present case is concerned, all that is sought to be



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changed is the provision of law alone. That is why, I started of the Judgment recording the statement of Mr.Arvind Subramaniam that he will not introduce any new facts in the petition. A mistake in the provision of law can always be corrected even at an appellate stage. This is not because the party is aware of the provision. The party informs the counsel about the facts and it is finally the counsel, who drafts the petition, who gives the appropriate provision of law. If a mistake is committed in the provision of law, it is always capable of correction.

14. It is here that I have to discuss the precedents that has been cited by Mr.Suchit Anant Palande. With respect to the first of the three Judgments, it was not a correction of mere provision of law, but certain new facts were sought to be introduced in the *Varun Singla's case* (cited supra). An amendment application was taken out seeking for amendment of the petition by introduction of new facts after the evidence had commenced. Hence, it was rejected.

15. Similarly, in *K.Sekar's case* (cited supra) a petition had been



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filed on the grounds of nullity and thereafter, the husband wanted to bring on record new facts regarding the complaint given by the wife to the police officials and the District Social Welfare Protection Officer and similarly in ***Vaishali Shrikant Arane'*** case (cited supra), the wife raised a plea that the husband was sexually impotent, for the first time, in the amendment petition. By that time, the petition has been filed, cross examination of the petitioner had been concluded, it was under those circumstances, the learned Judge had found that new plea should not be permitted, because, if they were so permitted, it will put the respondent prejudice, including sending him for some medical examination.

16. In the facts before me, none of these issues arise. It is a simple amendment of a provision of law. The petitioner would still have to prove the facts pleaded before the Family Court and that on the basis of the averments made in the petition a case of cruelty is made out. In case, the averments are proved and the Court is satisfied, the decree of divorce would follow otherwise it would end in a dismissal.



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17. Mr.Suchit Anant Palande, at this stage would submit that he had cross examined the respondent-wife at length and therefore, he would be put to prejudice, by the change in the provision of law.

18. I am not willing to accept this submission, because cross examination is done on the facts presented before the Court and not on the basis of law. All points failing, I am not in a position to come to the rescue of Mr.Suchit Anant Palande's client.

19. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

19.08.2024

Index : Yes / No
Internet:Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To
The II Additional Principal Judge
II Additional Principal Family Court, Chennai.



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V.LAKSHMINARAYANAN, J.,

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