



WEB COPY



A.No.486 of 2024
and
C.S.No.369 of 2019

Dr.G.JAYACHANDRAN,J.

This application is filed to amend the plaint by incorporating additional relief which is supplementary to the first relief sought in the main suit.

2. The brief facts is that the plaintiff and the defendant got married and have a minor daughter, who is presently 16 years old. The marriage got solemnized on 22.08.2005 at Chennai. The husband, who is the defendant in the suit, is a citizen of USA. When the marital relationship got failed, he himself filed an application for dissolution of marriage before the family Court in Chennai in H.M.O.P.No.230 of 2018. Whereas, the plaintiff had filed application for restitution of conjugal rights. After chequered travel of litigation, presently the O.P., filed by the defendant was dismissed and the O.P., filed by the plaintiff for restitution of conjugal rights allowed. Meanwhile being the citizen of USA, the defendant had moved the Superior Court at California for dissolution of marriage. By virtue of interim order passed by the division bench of this Court in C.M.A.No.3132 & 3133 of 2013 dated 02.11.2018, his petition for divorce was dismissed. Later it appears that the defendant had instituted a fresh petition for divorce before the Circuit Court in the state of Missouri, US.



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Though initially that petition was also dismissed, by way of an appeal the petition been remanded back to Circuit Court, Missouri and the defendant had obtained a decree of dissolution of marriage. This has happened when the family Court in Chennai granted decree of restitution of conjugal rights in O.P.No.3218 of 2008 and an interim order passed by this Court restraining the defendant from instituting any case against the plaintiff in USA in respect of the marriage dated 22.08.2005. In the said background, the present application is filed to amend the plaint with the supplementary prayer to declare the decree of divorce granted by the Circuit Court at Missouri, which arising out of the marriage solemnized between the parties on 22.08.2005 while defendant been specifically restrained from instituting any proceedings in the Court at USA.

4. The counter filed by the defendant opposing the application for amendment justifying his conduct of filing petition for divorce at Circuit Court at Missouri and also objecting filing the amendment petition instead of filing separate suit paying appropriate Court fee.

5. On considering the rival submission and the fact of the case, this



Court finds that the amendment sought in this application to declare the order dated 28.07.2020 passed by the Judicial Circuit Court State of Missouri in CS1911FC00525 as null and void is the consequence of the violation of the interim order passed by the defendant by instituting the said divorce proceedings. It is subsequent event after filing of the suit and offshoot of main relief sought in the suit.

6. Being a consequential relief, it is unnecessary for the party to file a separate suit and the Court fee for the suit. The reason for committing breach of the interim order and instituting a fresh suit before the Circuit Court of Missouri to be justified by the defendant and his own breach cannot be taken advantage by him to non suit the plaintiff.

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rpl

7. For the said reason, the application for amendment is allowed. The



defendant is directed to file written statement, if any on 03.12.2024. The

petitioner/plaintiff is directed to carry out the amendment and file the Amended

Plaint Copy within a period of three days.

12.11.2024

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