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C.R.P.(PD)Nos.4645 and 4646 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)Nos.4645 and 4646 of 2024
and
C.M.P.Nos.25931 and 25934 of 2024

Achim Weber

.. Petitioner in both
C.R.P.'s

Vs

A.Revathy

.. Respondent in both
C.R.P.'s

PRAYER in both C.R.P's: Civil Revision Petitions is filed under Article 227 of the Constitution of India, to set aside the Order dated 30.08.2024 passed by the learned IV Additional Principal Family Court at Chennai in I.A.Nos.3 and 4 of 2023 in O.P.No.859 of 2022.

For Petitioner : Mr.S.Saravana Kumar

COMMON ORDER

These two Civil Revision Petitions arise out of the order passed



C.R.P.(PD)Nos.4645 and 4646 of 2024

by learned IV Additional Principal Family Court at Chennai in I.A.Nos.3 and 4 of 2023 in O.P.No.859 of 2022 dated 30.08.2024.

2. O.P.No.859 of 2022 was presented by the Civil Revision Petitioner seeking for declaration that the marriage that had taken place between him and the Respondent on 05.03.2010 in "Jesus with us" Church Office No.8/15, Negatha Koil Lane, Royapuram, Chennai is null and void.

3. The Petitioner pleads that the Respondent, who was a Hindu, had married him on 05.03.2010 at the aforesaid church. Thereafter, the Petitioner and the Respondent were residing together till the divorce petition was filed.

4. The ground on which the marriage is sought to be dissolved is that the respondent/wife had previously been married, which came to be dissolved only on 03.10.2012 and therefore, on the date on which the she got married, to the civil revision petitioner, her status is that of a married individual. He pleads that as per the Indian Christian Marriage Act, a person whose previous marriage is in subsistence, is incompetent



C.R.P.(PD)Nos.4645 and 4646 of 2024

to enter into a matrimony.

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5. Notice was ordered in the petition and the wife also filed a counter. Pending the proceedings, she took out applications in I.A.Nos.3 and 4 of 2023 seeking for interim maintenance as well as for payment of litigation expenses. The wife pleaded that she was aged 14 years, when she was given in marriage to one Murugan on 22.01.2000. Within 3 years, by the age of 17, she is said to have begotten three daughters. She pleaded that she was working as a servant maid in the house of the civil revision petitioner. Relationship developed between the parties and it led to a marriage proposal made by the civil revision petitioner to the respondent.

6. The respondent, is an uneducated person, who is an 8th standard drop out. She pleaded that they lived as husband and wife post their wedding in 2010. This relationship had continued till he filed the divorce petition. She pleaded that in and around 2020, she developed cancer in the uterus and the said organ had to be removed. The fact that she was not able to give conjugal bliss to the civil revision petitioner led to filing of the Divorce Petition by the civil revision petitioner. She



C.R.P.(PD)Nos.4645 and 4646 of 2024

further pointed out that O.P.No.859 of 2022 itself is at the stage of recording evidence i.e, for cross-examination of P.W.1. She also pointed out that the age difference between the civil revision petitioner and herself was 27 years. On the date of marriage, the Civil Revision Petitioner was 50 years old and the respondent was a young girl of 23 years. She pleaded that the husband had arranged lawyers for filing of O.P.No.2978 of 2012 seeking divorce from her first husband viz., Murugan, in which, a decree was passed on 03.10.2012. She added that when she was unaware of the divorce proceedings, it was the civil revision petitioner who had hastened the process in order to obtain Overseas Citizenship of India (OCI) status through the marriage with the respondent. She further points out that the husband had initiated the proceedings stating to her that their marriage will hold water only, if there is a divorce through the court of law for the previous marriage which was contracted when she was 14 years old. She further added that the Civil Revision Petitioner is a Director of King Chain Pvt Ltd., in Tambaram and is drawing a sum of Rs.1,50,000/- per month. Pleading that she is not able to maintain herself as well as for taking care of her medical expenses, she sought for an amount of interim maintenance as stated above.



C.R.P.(PD)Nos.4645 and 4646 of 2024

7. This application was resisted by the husband stating that though they were married in the year 2010, as decree of divorce was granted only in the year 2012, he is not liable to pay any amount to the respondent/wife. He pleaded that his property is under the occupation of the respondent/wife and therefore, she need not be paid any maintenance. The wife also, on these pleadings, sought for litigation expenses of Rs.50,000/- in I.A.No.4 of 2023.

8. The learned Trial Judge, on the basis of the affidavit and petition and after perusing Ex.R1 to Ex.R12 that had been filed by the Civil Revision Petitioner/husband, came to a conclusion that a sum of Rs.15,000/- as maintenance from 29.03.2023 till the disposal of the O.P. should be ordered as interim maintenance. He further fixed 25,000/- as litigation expenses. Challenging both the orders, the present Civil Revision Petitions.

9. I heard Mr. S.Saravana Kumar for the civil revision petitioner.

10. Mr.S.Saravana Kumar pleads that when the relationship between the petitioner and respondent is in dispute, the Trial Court ought



C.R.P.(PD)Nos.4645 and 4646 of 2024

not to have fixed the maintenance or granted litigation expenses. He draws my attention to the marriage certificate that has been issued by the Personal Assistant (General) to the Registrar General of Births, Deaths and Marriages, Chennai 28, to point out that the wife had shown that she is a divorcee and a spinster, whereas, the divorce itself came about only two years later. Hence, he states that the order requires to be revised.

11. I have carefully considered the submissions of Mr.S.Saravana Kumar

12 . The narration of the facts shows that the respondent/wife, even as per the admitted case of the civil revision petitioner, had been married at the age of 14 and by 17, she had become a mother of three children. The facts *prima facie* reveal that the petitioner developed a relationship with the respondent, after knowing about her previous marriage and also about the birth of her three children, and proceeded to marry her. This shows that the respondent had repudiated the previous marriage which she was legally entitled to do before marrying the civil revision petitioner.



C.R.P.(PD)Nos.4645 and 4646 of 2024

13. It is open under law for the respondent, who has been forced into a child marriage to repudiate the same, once she reaches the age of majority. I should not forget the economic and societal status to which the respondent/wife belongs. She was a mere maid who was working in the house of the civil revision petitioner. It is at that point of time, relationship developed between them. From 2010 till 2020, when the reproductive organ of the respondent/wife was functioned, all was hunky-dory. The minute the wife's reproductive organ was removed, the matrimony hit the rocks.

14. For the purpose of maintenance under Section 36 of the Indian Divorce Act, *prima facie* proof has to be given that the marriage existed between the parties. The certificate that has been issued on 05.03.2010 clearly indicates that the relationship had existed between the parties. The divorce petition too came to be filed only in 2022 i.e, after 10 years of the relationship between the petitioner and the respondent. I should add here that the age difference between the petitioner and the respondent is a whopping 27 years.

15. *Prima facie*, a relationship exists between the civil revision



C.R.P.(PD)Nos.4645 and 4646 of 2024

petitioner and the respondent. Whether the same is null and void is for the court to decide after trial. Interim maintenance is granted to a woman in order to withstand the course of litigation that has been initiated by her husband against her. The mere fact that proceedings have been initiated at the instance of her husband, which resulted in *ex parte* decree does not, in my view, deprive the wife to be paid maintenance. Whether the act of continuing to live with his wife post the divorce from her first husband, viz., Murugan, is an act of condonation by the civil revision petitioner, is for the Trial Court to decide. As *prima facie* the relationship exists between the parties and since the wife pleads that she is unable to maintain herself, I do not find error in the order of the Trial Court granting maintenance.

16. Further, from the marriage certificate of the petitioner and the respondent, it is clear that the civil revision petitioner is a Director of a jewellery company and the respondent was working as a tailor. It is a fact that the respondent was a mere maid in the house of the civil revision petitioner. It is a mere observation and will not affect the merits of the case at the time of final disposal.



C.R.P.(PD)Nos.4645 and 4646 of 2024

17. It is the sacrosanct duty of the husband to maintain his wife.

WEB CO All that the learned trial judge has done is enforcing that duty. He has fixed only Rs.15,000/- towards maintenance which cannot be said to be excessive and the litigation expenses too, is not a high figure but only of Rs. 25,000/-. The status of the husband is that he is a German citizen and very well placed in the society in which he moves. As the amount is not excessive, I am not inclined to interfere as such.

18. At this stage, Mr.Saravanan Kumar pleads there may be a direction to dispose of O.P. No.859 of 2022 at an early date. Considering the fact that both the petitioner as well as the respondent are Cancer survivors, the learned Judge is requested to expedite the proceedings at all stages and dispose of the O.P. within a period of 9 months from the date of receipt of a copy of this order. The learned Judge shall ensure that the arrears are cleared and the wife is being paid maintenance month on month. In case of any default, the Court need not wait for an application to strike off the divorce petition. It can suo motu exercise the power to strike off.



C.R.P.(PD)Nos.4645 and 4646 of 2024

19. It is made clear that I have discussed the aforesaid facts only in order to come to the conclusion, that the wife is entitled to be maintained. This shall not affect the merits of the O.P. at the time of final disposal.

These Civil Revision Petitions stands dismissed with the aforesaid directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

The I Additional Family Court
Chennai.



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C.R.P.(PD)Nos.4645 and 4646 of 2024

V. LAKSHMINARAYANAN,J.

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C.R.P.(PD)Nos.4645 and 4646 of 2024

19.11.2024