



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Rev. Appln. No. 15 of 2024

Pachiyammal

...petitioners

Vs.

Raguvaran

...Respondents

PRAYER : This petition has been filed under Section Order 47 Rule 1 of CPC, to review the order dated 16.11.2023 in Tr.C.M.P No. 80 of 2022 passed by their lordship the Honourable Mrs. Justive. T.V.Tamilselvi and set aside the condition of disposing off the HMOP No. 7 of 2023 in three months' time from 16.11.2023 and pass any such order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

**ORDER**

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This review application has been filed to review the order dated 16.11.2023 in Tr.C.M.P No. 80 of 2022 and set aside the condition of disposing off the HMOP No. 7 of 2023 in three months' time from 16.11.2023.

2. Heard both sides.

3. Admittedly, at the time of marriage i.e., on 01.02.2013, the petitioner was minor and she is uncle daughter of the respondent. Based on arrangement of the family members the petitioner married the respondent. Thereafter, due to misunderstanding arose between them and the petitioner left the matrimonial house and was living in her parent's house. Thereafter, she had affair with one Raja and married him. Now she begotten two child. The respondent also not denied that at the time of marriage the petitioner was minor and he has not taken steps to re-unite with the petitioner since because she had love affair with another man. Therefore, as pointed out by the petitioner's counsel the marriage between the petitioner and the respondent is void since because the petitioner was aged about 16 years at the time of marriage i.e., 01.03.2013. Therefore, the divorce petition filed by the respondent in HMOP No.7 of 2023 is pending before the Sub Court,



Thiruvannamalai, need not be considered. On the other hand, the marriage between them is null and void. Moreover, at the instigation of the family members the respondent married one Sindu. Therefore, as on date, both the petitioner and the respondent married another male and female and leading their respective life. So, there is no question about divorce based on the cruelty.

4. Considering the above facts of the case, as well as the ratio laid down by the Hon'ble Supreme Court in the case of Shilpa Sailesh vs. Varun Sreenivasan reported in [(2023 SCC online SC 544)] is extracted hereunder:-

50. In view of the aforesaid discussion, we decide this reference by answering the questions framed in the following manner:

(i) The scope and ambit of power and jurisdiction of this Court under [Article 142\(1\)](#) of the Constitution of India.

This question as to the power and jurisdiction of this Court under [Article 142\(1\)](#) of the Constitution of India is answered in terms of paragraphs 8 to 13, inter alia, holding that this Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantive provisions as enacted and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'.



.....
(iii) Whether this Court can grant divorce in exercise of power under Article 142(1) of the Constitution of India when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?

This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed.

5. Considering the above judgment and the petitioner was minor at the time of marriage and also both of them lived separately and leading the life with their partners. However, the petitioner counsel stated that respondent now got re-married and suppressed that fact and filed the petition for divorce. Nevertheless, this petitioner also got married another man and begotten the child. Thus, there is no possibility of cohabitation by both parties. Hence, the marriage between the petitioner and the respondent is declared as null and void. Further, the parties are directed to produce the copy of this order to the Court for closure of the case.



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6. Accordingly, this petition is disposed of. No Costs.

Consequently, connected miscellaneous petition is closed.

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T.V.THAMILSELVI, J.

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To
The Subordinate Judge, Polur.

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