



WEB COPY

C.RP(MD)No.1721 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

C.R.P(MD)No.1721 of 2024

V.Archana

... Petitioner

Vs.

S.Sureshkumar

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 27.06.2024 passed in the counter claim in I.A.SR.No.5354 of 2023 in H.M.O.P.No.448 of 2023 on the file of the Family Court, Kanyakumari District at Nagercoil and consequentially direct the lower Court to take the counter claim on file.

For Petitioner

:Mr.J.Barathan

ORDER

This civil revision petition is filed as against the docket order dated 27.06.2024 returning the counter claim of the petitioner.



2. The respondent herein had filed H.M.O.P.No.448 of 2023 with the prayer for restitution of conjugal rights. In the said OP, the counter claim was originally filed by the petitioner /wife on 01.12.2023 with prayers to declare the marriage between the petitioner and the respondent dated 18.10.2020 as null and void and to direct the husband to pay a permanent alimony of Rs.1,00,00,000/-. The said petition was first returned on 21.03.2024 for want of adequate Court fee. The petitioner re-presented the same on 23.03.2024 by affixing a sum of Rs.20 as Court fee, thereupon, on docket order dated 15.05.2024 was passed to call the original petition in the open Court to clarify regarding the Court fee with reference to the second prayer in the counter claim. On the said day, the matter was adjourned for hearing the petitioner on the maintainability of the counter claim and the matter was posted on 27.06.2024. However, on 27.06.2024, since the husband already withdrew the HMOP.No.448 of 2023, the matter was returned.

3. Even though, technically, it can be pleaded that the date of filing i.e., 01.12.2023 is the date of filing of the counter claim and on which date, the HMOP was on file and even if the husband withdraws the HMOP, still the counter claim can be proceeded with, it should also be seen that on the said day, not even adequate Court fee was paid and even before the counter



claim was taken on file, the HMOP is withdrawn. The matter pertains to declaration of nullity of the petitioner's marriage and for consequential relief of alimony. Therefore, upon return, there is no prejudice whatsoever which is caused to the respondent/ wife to file a fresh HMOP for the said reliefs. Therefore, when the order passed by the trial Court does not cause any prejudice whatsoever and it is only a matter of filing a fresh petition with appropriate Court fee, especially, considering the circumstances that even before numbering of the counter claim, the HMOP itself is withdrawn, I am not inclined to interfere with the order. However, the petitioner /wife will be at liberty to file an independent petition for declaring about the nullity of the marriage and for all consequential claims.

4. With the said liberty, the Civil Revision Petition is disposed of. No costs.

31.07.2024

NCC:Yes/No

Index:Yes/No

Rmk

NOTE : Registry is directed to return the original papers, which are filed along with this petition, to the learned counsel, after getting copy of the same.

To

The Judge, Family Court, Kanyakumari District at Nagercoil.



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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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