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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.791 of 2023

Rehhana @ Nathiya

... Appellant

Vs.

Senthilkumar

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 39(1) of the Special Marriage Act, against the order made in S.M.O.P.No.26 of 2023, dated 11.07.2023 on the file of the 1st Additional District Judge (FAC), Madurai.

For Appellant : Mr.J.Gunaseelanmuthiah

For Respondent : No Appearance

JUDGEMENT

The claimant has filed this Civil Miscellaneous Appeal against the order made in S.M.O.P.No.26 of 2023, dated 11.07.2023 on the file of the 1st Additional District Judge (FAC), Madurai.

2. The said petition in S.M.O.P.No.26 of 2023 was filed under Section 27 (d) of Special Marriage Act, 1954, seeking for dissolution of marriage solemnized on 10.04.2010.



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3. In the said petition, it has been stated that the appellant wife belongs to Muslim Region and the respondent husband belongs to Hindu religion and they have solemnized the marriage in the presence of their parents on 10.04.2010 by exchanging garlands in the house of the appellant at Thiruvedagam, Sholavandan, Vadipatti Taluk, Madurai District. After marriage, they lived in Thiruvedagam. Out of the wedlock, they were blessed with two daughters, namely Nisha and Sabana Jasmine.

4. It is further submitted that the respondent under the influence of alcohol frequently quarrelled with the appellant. Further the respondent would beat and physically abuse the appellant. Moreover, the respondent is an alcoholic with no trace to recover from the said habit. Hence, the Appellant could not bear the cruelty meted out by her husband.

5. The Appellant is working in Petrol bunk and from the said income is taking care of her children. But the respondent repeatedly seeking money from the appellant and also harassing the children and also threatened to commit suicide by pouring petrol. Therefore, the appellant had filed a petition



to dissolve the marriage under Special Marriage Act. The said petition was dismissed for the reason that the marriage was not solemnized under Special Marriage Act and also the marriage was not registered under the said Act. Further the appellant had not submitted any proof that the marriage was solemnized under the Special Marriage Act. Hence, the said petition was dismissed. Aggrieved over the same, the present Civil Miscellaneous Appeal is filed.

6. After hearing submissions made by the Learned Counsel appearing for the appellant, this Court is of the considered opinion that when the marriage was not solemnized under Special Marriage Act, then dissolution under the same Act is not permissible. Infact the Court below has granted liberty for filing suit before the appropriate Forum to seek remedy and this Court is of the considered opinion that the impugned order is absolutely right and this Court is not inclined to interfere in the impugned order.

7. Therefore, this Civil Miscellaneous Appeal stands dismissed. The order made in S.M.O.P.No.26 of 2023, dated 11.07.2023 on the file of the 1st Additional District Judge (FAC), Madurai, is hereby confirmed. However, liberty is granted to the appellant to seek relief before the appropriate Forum. However, the Respondent/husband is restrained from inflicting any cruelty



against the wife as well as the two daughters, till the period of interim order is obtaining from the appropriate Forum. No costs.

13.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1. The 1st Additional District Judge (FAC),
Madurai.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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