



C.R.P.(MD)No.2915 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.2915 of 2023

and

CMP (MD) No.15096 of 2023

Dinesh Kumar : Petitioner/Respondent/
Petitioner

Vs.

K.Nathiya : Respondent/Petitioner/
Respondent

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records of the lower court and set aside the order dated 11/08/2023 passed in PA No.377 of 2023 in HMOP No.85 of 2019 o the file of the Subordinate Judge, Paramakudi and pass such other suitable orders.

For Petitioner : Mr.V.Ramakrishnan

For Respondent : Mr.M.S.Jeyakarthik

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 11/08/2023 passed in IA No.377 of 2022 in HMOP No.85 of 2019 on the file of the Subordinate Judge, Paramakudi.



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2. The facts in brief:-

HMOP No.85 of 2019 was filed by the petitioner seeking the relief of divorce on the ground of cruelty. The respondent appeared, filed her counter and when the process was underway, he has taken out a petition in IA No.377 of 2022 to file a counter claim with the following allegations:-

"In the counter claim, she has stated that she is willing for reunion. Since, she is willing for reunion, additional counter now filed, must be received."

3. That came to be resisted by the petitioner stating that there is long delay in filing the additional counter. Since already enquiry commenced, it is not permitted under law.

4. The petition filed by the respondent was allowed by the trial court stating that since, it is the matrimonial issue between the parties, even the additional counter is received, no prejudice will be caused.

5. Against which, this civil revision petition is preferred.



6.Heard both sides.

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7.The learned counsel appearing for the petitioner would submit that the original counter was filed, on 13/03/2020, but she has not whispered her willingness. The trial commenced, on 02/09/2022. He was examined in chief. But no cross examination. After a long time only, the present IA came to be filed. So, according to him, the counter claim cannot be permitted, after filing of the counter. He would rely upon Order 8 Rule 6(A) CPC. Such a counter claim cannot be filed in the form of Order 8 Rule 9 CPC. Only Order 8 Rule 6 CPC will apply. Even though the judgment of the Hon'ble Supreme Court was cited, that was not considered by the trial court.

8.Per contra, the learned counsel appearing for the respondent would submit that absolutely, no prejudice is caused to the petitioner in receiving the additional counter or the counter claim as the case may be.

9.In the matrimonial proceedings, the matter must be resolved to its fullest y raising all points. So, it is not permissible on the part of the respondent to make a belated claim. If at all, she can file a separate petition seeking restitution of conjugal rights.



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10.On that score, the impugned order passed by the trial court is liable to be set aside. Of course, liberty is always available to the respondent herein to file a separate petition seeking restitution of conjugal rights. This order will not stand in the way of filing such a petition and if such a petition is filed, then it ought to be tried along with the present HMOP No.85 of 2019.

11.In the result, this civil revision petition is **allowed**. The impugned order, dated 11/08/2023 passed in IA No.377 of 2022 in HMOP No.85 of 2019 by the Subordinate Judge, Paramakudi, is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

04/03/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Sub Court,
Paramakudi.

2.The Section Officer,
ER/VR section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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