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C.R.P. (PD).No.5341 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.5341 of 2024

V.Saroja

.. Petitioner

Vs.

1.M.Gopalakrishnan @ Mariyappan

2.Mariyammal

3.The Joint Sub Registrar,
Virugambakkam Sub-Registrar Office,
Virugambakkam, Chennai – 600 092.

4.The Manager,
Indian Bank, Vadapalani Branch,
Chennai – 600 026.

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to dispose of the suit in O.S.No.91 of 2016 on the file of the learned IV Additional Family Court, Chennai, in a time bound manner by allowing the Civil Revision Petition.

For Petitioner : Ms.Thenmozhi R.

For R3 : Mr.N.Muthuvel
Government Advocate



ORDER

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2.The civil revision petitioner is the wife. The 1st respondent is the husband. They solemnized their wedding on 30.08.1991. From the wedlock, two children were born to the couple. The first child is a daughter and the second child is a son. The children are suffering from physical and mental challenges respectively.

3.Pleading that he had been treated with cruelty, the husband has initiated O.P.No.4526 of 2011 on the file of the IV Additional Family Court, Chennai. Pending this proceeding, as the wife feared the husband would alienate the property for which she claims she has a right, she presented O.S.No.91 of 2016 on the file of the very same Court. She has thereafter presented O.P.No.3364 of 2018 seeking restitution of conjugal rights.

4.All the three proceedings are pending trial. Fearing that the Court



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would dispose of divorce petition without considering the plea for restitution of conjugal rights and the claim over the property, the petitioner – wife has presented this civil revision petition seeking for expeditious disposal of the suit.

5. When the matter was taken up for admission on 10.01.2025, I heard Ms. Thenmozhi R. I requested for a report from the learned IV Additional Judge, Family Court, Chennai.

6. The learned Judge has sent a report saying that the civil revision petitioner has not cross examined her husband so far and is not cooperating for disposal of the proceedings. He has stated that he will dispose of the suit, subject to the cooperation of the plaintiff, within a time bound manner.

7. I heard Ms. Thenmozhi R. and I have gone through the records.

8. O.P.No.4526 of 2011, O.P.No.3364 of 2018 and O.S.No.91 of 2016 are all matters between the members of the same family. The first proceeding is one for divorce and the second one is for restitution of conjugal rights.



Interest of justice demands that all the proceedings have to be disposed of together by a common judgment.

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9.Ms.Thenmozhi R. submits that common evidence has not been recorded in the proceedings, but separate evidence has been recorded and all the three matters are been adjourned together. She also points that the evidence of the wife was closed in O.P.No.4526 of 2011 on 05.12.2024. In so far as O.P.No.3364 of 2018, she states that the evidence of the wife has been completed and it is listed for further cross examination of the husband. Similar is the situation in O.S.No.91 of 2016. Insofar as O.P.No.4526 of 2011, as the evidence was closed on 05.12.2024, two applications have been filed in I.A.SR.Nos.643 & 644 of 2025 to reopen the evidence of the husband and to recall him for the purpose of cross examination.

10.I have gone through the petition as well as the diary extract reports that has been submitted by the learned counsel.

11.When the husband has not been cross examined in a divorce proceedings, it does not give much room for the wife to proceed further in the



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matter. This is because the evidence will go uncontroverted, which will put the civil revision petitioner, at a danger of facing a decree for divorce without contesting. As parties have been litigating for over 13 years, such an eventuality would not be pleasant to either of them. If no evidence has been recorded, there is also a possibility, that it will be treated as an *exparte* decree and an application could be filed to set aside the same. It would only add to the agony of the litigants.

12.In the light of the above discussions, I am inclined to pass the following directions:

(i)The learned judge shall consider the applications to reopen and recall in I.A.SR.Nos.643 & 644 of 2025 positively, and permit the wife to cross examine the husband in O.P.No.4526 of 2011.

(ii)Since O.P.No.3364 of 2018 is posted for further cross examination of R.W.1 on **29.01.2025**, the learned Judge shall ensure that the cross examination of R.W.1 in O.P.No.3364 of 2018 is concluded on **29.01.2025** or by **30.01.2025**.

(iii)Similarly, the learned Judge shall ensure that the cross examination of R.W.1 in O.S.No.91 of 2016 is completed by **07.02.2025**.



(iv) In O.P.No.4526 of 2011, as the wife has already filed her proof affidavit, her evidence will be completed on or before **07.02.2025**.

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(v) Once the evidence is over, the learned Judge may accommodate the parties by two weeks, till **21.02.2025**, to enable them to produce any further evidence.

(vi) Thereafter, he shall hear the arguments and pronounce judgments in all the three proceedings on or before **31.03.2025**.

13. Since the proceedings are posted on **29.01.2025**, the learned Judge is requested to act on a web copy of this order and not insist upon the production of a certified copy of the order.

14. Accordingly, this Civil Revision Petition is ordered with the above directions. No costs.

28.01.2025

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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To
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The IV Additional Family Court,
Chennai.

V.LAKSHMINARAYANAN, J.



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