

**Second Petition For Divorce On Grounds Like Cruelty, Desertion, Adultery Not Hit By Res-Judicata When Founded On New Facts: Madras High Court**

**2023 LiveLaw (Mad) 42**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**G.K. ILANTHIRAIYAN; J.**

**C.R.P.No.3753 of 2019 and C.M.P.No.24655 of 2019; 10.01.2023**

*For Petitioner: Mr.R.Nalliyappan*

*For Respondent: Mr.I.Calvin Jones for M/s. Ajmal Associates*

**ORDER**

This Civil Revision Petition has been filed as against the fair and decreetal order dated 28.08.2019, passed by the learned Subordinate Judge, Udumalpet, in I.A.No.10 of 2019 in H.M.O.P.No.22 of 2018, thereby dismissing the petition filed for rejection of divorce petition on the ground of res-judicata.

2. The petitioner is the wife and the respondent is the husband. Originally, the respondent filed petition for divorce in H.M.O.P.No.875 of 2005 on the ground of cruelty as against the petitioner herein. At the same time, the petitioner also filed petition in H.M.O.P.No.77 of 2005 for restitution of conjugal rights. The Family Court allowed the petition for restitution petition and dismissed the divorce petition. Aggrieved by the same, the respondent preferred an appeal in C.M.A.Nos.46 & 45 of 2007 on the file of the Fast Track Court, Salem. The Appellate Court allowed both the appeals and granted divorce and also dismissed the restitution of conjugal rights petition. Aggrieved by the same, the petitioner herein filed Civil Miscellaneous Second Appeal before this Court in C.M.S.A.Nos.38 & 39 of 2008 respectively, and this Court reversed the findings of the first appellate Court and dismissed the divorce petition and allowed the restitution of conjugal rights petition.

3. Thereafter, on fresh cause of action and on different set of grounds viz., desertion and continuous cruelty with regard to subsequent events, the respondent filed another petition for divorce in H.M.O.P.No.22 of 2018. While pending the divorce petition, the petitioner filed the petition under Section 11 of C.P.C., to dismiss the petition on the ground of *res judicata*. The Court below dismissed the said petition and as against which, the petitioner filed this present Civil Revision Petition.

4. The learned counsel appearing for the petitioner submitted that the application for divorce is clear abuse of process of law and the principle of res-judicata is clearly applies to the case on hand, since already the respondent filed divorce petition on the ground of cruelty and the same was dismissed and confirmed by this Court. Subsequently, the petitioner also filed maintenance case and the same was also allowed and directed the respondent to pay a sum of Rs.2,500/-. However, the respondent did not comply the said order passed in the maintenance case by the Court below. The respondent also lodged complaint in D.V.O.P.No.2 of 2013 on the file of the learned Judicial Magistrate No.I, Udumalaipet, and it is pending. Hence, he prayed to allow the present Civil Revision Petition.

5. The learned counsel appearing for the respondent submitted that after dismissal of the earlier divorce petition, the petitioner filed so many petitions under the Domestic Violence Act and also lodged complaint as against the respondent and his family members. Therefore, there was continuous harassment made by the petitioner and

as such the respondent was constrained to file another divorce petition on the ground of continuous cruelty and also deserted for long period. Hence, the trial Court rightly dismissed the rejection petition and prayed to dismiss the petition.

6. Heard Mr.R.Nalliyappan, learned counsel appearing for the petitioner and Mr.I.Calvin Jones, learned counsel appearing for the respondent.

7. The only contention raised by the petitioner is that the second petition for divorce is hit by *res-judicata*, since the respondent already filed divorce petition and the same was dismissed. On a perusal of divorce petition revealed that the cause of action is different and as such the present divorce petition is very much maintainable and the principle of *res-judicate* is not applied. Admittedly, the respondent raised the ground of cruelty once again and filed the petition for dissolution of marriage in H.M.O.P.No.22 of 2019 on the file of the Subordinate Court, Udumalpet. Even, if same grounds are taken in the subsequent proceeding for divorce, no bar of *res judicate* could apply as long as the cause of action for the subsequent proceedings remains to be different.

8. Insofar as the ground of dissolution of matrimonial matters are concerned, they are of continuing or recurring nature. The petition for dissolution of marriage on the ground of cruelty, desertion and adultery is not precluded from suing again for dissolution on the same grounds, provided the relief is founded on new facts. The cause of action means a bundle of facts constituting the right of a party which he has to establish in order to obtain a relief from a Court. The facts which constitute the grounds of cruelty, desertion or adultery as the case may be, are likely to vary giving rise to different causes of action depending on the facts and circumstances of each cases. When cause of action is of continuing and recurring nature, the subsequent litigation of divorce brought on same grounds disregarding the dismissal of former O.P. will not be barred by *res-judicata*.

9. Therefore, the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below. Since the divorce petition is of the year 2018, the trial Court viz., Subordinate Judge, Udumalpet, is directed to dispose the divorce petition within a period of six months from the date of receipt of a copy of this Order.

10. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.