

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

**DATED : 01.12.2015**

**CORAM :**

**THE HONOURABLE MS.JUSTICE R.MALA**

**C.R.P(PD).No.2376 of 2014**

**and**

**M.P. No.1 of 2014**

D.Sakkarapani @ Babu

.. Petitioner

Vs.

Ingeborg Johanna Lutzenberger @ Ramu

.. Respondent

**Prayer:-** This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 09.06.2014 in I.A.No.850 of 2014 in D.O.P.No.73 of 2013 on the file of the Principal District Court, Villupuram.

For Petitioner :Mr.G.Rajan

For Respondent : Mr.S.Dawood Khan  
Ms.B.Saranya

**ORDER**

The Civil Revision Petition is filed against the fair and decreetal order dated 09.06.2014 in I.A.No.850 of 2014 in D.O.P.No.73 of 2013 on the file of the Principal District Court, Villupuram.

2.The wife/respondent herein has filed a petition in D.O.P.No.73 of 2013 under Section 27(1A)(i) of the Special Marriage Act for divorce on the ground of cruelty. The revision petitioner/husband filed a counter stating that without his consent, the respondent/wife had sent the adopted child viz., Auro Chandra to the foreign country. During pendency of that petition, the revision petitioner/husband has come forward with an application in I.A.No.850 of 2014 under Order 11 Rule 12 C.P.C. for a direction to the respondent/wife to produce the birth certificate of Auro Chandra and her passport stating that the respondent/wife has manipulated and fabricated the same. The trial Court after considering the objection raised by the respondent/wife, dismissed the application, against which, the present revision has been preferred by the revision petitioner/husband.

3.Learned counsel for the revision petitioner submits that the respondent/wife alone has deserted the revision petitioner/husband and forcibly taken the child with her. In para-9 of his counter, it was stated that the respondent/wife had sent the child to the foreign countries without the consent and knowledge of the revision petitioner/husband. Further, the wife had removed the name of the

of the revision petitioner/husband in the passport of child Auro Chandra and manipulated and fabricated the documents and thereby committed fraud against the Government. To prove the same, birth certificate and passport of Auro Chandra are necessary. That aspect was not considered by the trial Court. Therefore, he prayed for allowing the revision petition.

4. Resisting the same, learned counsel for the respondent submits that adopted child Auro Chandra was now 22 years old and the documents viz., passport and birth certificate are with her. But she is not a party to the proceedings. So those documents are not relevant for deciding the divorce application and the trial Court has rightly considered the same and dismissed the application. Therefore, he prayed for dismissal of the revision.

5. Considered the rival submissions made on both sides and perused the materials available on record.

6. The respondent/wife has filed a divorce application on the ground of cruelty stating that marriage of the respondent/wife with the revision petitioner/husband has irretrievably broken down and

besides practicing physical and mental cruelty against the wife, the husband deserted the wife.

7.The only point to be decided for divorce application is whether the respondent/wife met out cruelty in the hands of the husband. It is pertinent to note that the child Auro Chandra is none other than the own brother's daughter of the revision petitioner, now she is 22 years old and attains majority and the relevant documents are with her. Under such circumstances, it is immaterial as to whether the passport of the adopted child has been manipulated and fabricated at the time of deciding divorce application. The trial Court has considered all the aspects in proper perspective manner and came to the correct conclusion. So the order passed by the trial Court does not suffer any illegality or infirmity and it is hereby confirmed. The Civil Revision Petition deserves to be dismissed and it is hereby dismissed. It is left open to the revision petitioner/husband to approach appropriate forum for cancellation of the said passport.

8.In the result, the Civil Revision Petition stands dismissed. No

costs. Consequently, connected Miscellaneous Petition is closed.

01.12.2015

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Index:Yes/No

Internet:Yes/No

To

The Principal District Court, Villupuram.

**R.MALA,J.**

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**and M.P. No.1 of 2014**

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