

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2015

CORAM

THE HONOURABLE MR. JUSTICE **D.HARIPARANTHAMAN**

C.R.P.(PD)No.3136 of 2015 and
M.P.No.1 of 2015

S.Shanmugam

... Petitioner

vs.

Annammal

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 31.03.2015 made in I.A.No.295 of 2015 in H.M.O.P.No.731 of 2009 on the file of Principal Family Judge, Coimbatore.

For Petitioner : Mr.J.Pothiraj

ORDER

The revision petitioner is the husband. He filed H.M.O.P.No.731 of 2009 on the file of the Family Court, Coimbatore under Section 13(1)(ib) of the Hindu Marriage Act, seeking dissolution of marriage on the ground of cruelty.

2. The respondent/wife filed I.A.No.295 of 2015 in H.M.O.P.No.731 of 2009 under Order 16 Rule 1(2), 6 r/w Section 151 of C.P.C. to permit her to summon the Head master of Sri Jeyandra Saraswathi Matriculation and Higher Secondary School, Ondipudur and also to produce the documents

relating to admission record of S.Yuvasri of 8th standard and the documents produced at the time of admission of the said S.Yuvasri.

3. After contest, the learned Principal Family Judge, Coimbatore allowed I.A.No.295 of 2015 in H.M.O.P.No.731 of 2015 by an order dated 31.03.2015. This revision petition is against the aforesaid order dated 31.03.2015.

4. The learned counsel for the petitioner has vehemently contended that as per Order 16 Rule 1(1) of C.P.C., the parties shall present an application to summon witness or produce documents within 15 days of settlement of issues. Hence, the learned Judge is not correct in allowing the application.

5. I have considered the submissions made by the learned counsel for the petitioner and I have also perused the records carefully.

6. It is useful to extract Order 16 Rule 1(1) of the Code of Civil Procedure:-

"1. List of witness and summons to witnesses.- (1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to

call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court."

7. However, the respondent has filed application under Order 16(1)(2). Under Order 16(1)(2), there is no limitation prescribed for the parties to make an application to summon the witness.

8. It is also relevant to extract Order 16 Rule 6 of C.P.C.:-

6. **Summons to produce document.**- Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

This Rule also does not state that the application shall be made within 15 days after the settlement of issues.

9. It is the case of the respondent/wife that the petitioner had contracted second marriage with one Sundari and they are living together as husband and wife in the revision petitioner's house. It is the further case of the respondent/wife that the revision petitioner has a daughter by name Yuvasri through the second wife Sundari and the said Yuvasri is studying in

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Sri Jeyandra Saraswathi Matriculation and Higher Secondary School, Ondipudur and in order to prove the same, the respondent has filed I.A.No.295 of 2015.

10. In the said circumstances and also taking into account Order 16 Rule 1(2), 6 r/w 151 C.P.C., the trial Court allowed the said application. I do not find any infirmity in the said order. The Civil Revision Petition fails and accordingly, the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.08.2015

Index : Yes/No
Internet : Yes

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To
The Principal Family Court, Coimbatore.

C.R.P.(PD)No.3136 of 2015