

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA  
RAO**

**CIVIL REVISION PETITION No.1766 of 2014**

**ORDER:**

This Civil Revision Petition is filed challenging the Order dt.10-04-2014 in I.A.No.28 of 2014 in D.O.P.No.86 of 2010 of the VI Additional District Judge, Kadapa.

2. The petitioner herein is petitioner in D.O.P.No.86 of 2010, which he has filed under the provisions of the Hindu Marriage Act, 1955 seeking dissolution of marriage between himself and respondent.

3. Counter affidavit was filed by respondent, issues framed and trial commenced. The petitioner examined himself as P.W.1 and also examined P.Ws.2 to 6. P.W.6 is said to be Dr.D.Vyjayanthi, who is said to have performed tubectomy operation on respondent on 20-03-2010. She was examined at the instance of petitioner on 06-06-2013 and in her deposition Exs.X-3 to X-7 were marked.

4. The petitioner filed I.A.No.138 of 2013 to recall P.W.6 for further examination contending that she had given a certificate to him on 02-12-2012 stating that the

respondent underwent tubectomy operation on 20-03-2010; that the said certificate was misplaced by him and he could not further examine P.W.6 on the said certificate. The said I.A. was dismissed by the Court below on 06-02-2014.

5. On 20-02-2014, the petitioner filed I.A.No.28 of 2014 stating that he had located the certificate dt.02-12-2012 issued by P.W.6; that in her cross-examination by respondent, P.W.6 deposed that Ex.X-7 was issued to petitioner on 18-02-2013 when the petitioner had met P.W.6 personally, but in fact he visited the hospital of P.W.6 on 02-12-012 only and did not meet her on 18-02-2013.

6. This application was opposed by respondent contending that the examination of P.W.6 covered all aspects; that there was no need to recall P.W.6; the petitioner ought to have confronted P.W.6 with the certificate dt.02-12-2012 when she was in the witness box; and this application is filed only to drag on the proceedings.

7. By order dt.10-04-2014, the Court below dismissed I.A.No.28 of 2014. It held that the petitioner had knowledge of the letter dt.02-12-2012 at the time when P.W.6 was in the witness box but he did not elicit anything from P.W.6 in regard to the said document. It

held that the certificate dt.02-12-2012 now sought to be produced by petitioner is to the effect that respondent underwent tubectomy operation on 20-03-2010 and that the consent of husband was not obtained by her for the said operation. The said certificate also stated that father of respondent was present and he signed as a witness.

8. However, the Court below held that P.W.6 was sufficiently examined on behalf of petitioner with regard to undergoing of tubectomy operation by respondent; that the request of petitioner to recall P.W.6 in I.A.No.138 of 2013 was rejected on 06-02-2014; and thereafter the present application is filed. It also held that the petitioner is having knowledge of the document dt.02-12-2012 but avoided to examine P.W.6 with regard to the said document, and when the O.P. is at the stage of arguments and the respondent had filed a petition for restitution of conjugal rights, which is also being tried along with present O.P., and the said O.P. is at the stage of respondent's evidence i.e., petitioner herein, this application has been filed.

9. The learned counsel for petitioner submits that the Court below erred in dismissing I.A.No.28 of 2014 and that it was necessary to recall P.W.6 and examine her further with regard to the certificate dt.02-12-2012 issued by her in respect of the tubectomy operation performed by P.W.6 on respondent.

10. There is no dispute that P.W.6 was examined on behalf of petitioner on 06-06-2013 and she was also cross-examined by respondent and re-examined by petitioner. She marked Exs.X-3 to X-7 including case sheet of the surgery, which showed that she performed the said surgery on respondent on 20-03-2010. The Court below has held that from the evidence of P.W.6 it is clear that respondent herself gave consent for tubectomy operation and there was no necessity for her to be recalled again. It may be that in the document dt.02-12-2012 allegedly issued by P.W.6 to petitioner, there is a recital that respondent gave consent for operation and her father signed as a witness and the petitioner did not give consent for surgery, but the petitioner had an opportunity to confront P.W.6 in the witness box and examine her with regard to the document dt.02-12-2012, but he did not do so for the reasons best known to him. The petitioner's application I.A.No.138 of 2013 filed previously to summon P.W.6 was dismissed on 06-02-2014. The case is now posted for arguments along with another O.P. filed by respondent for restitution of conjugal rights, in which the petitioner herein is respondent and the said O.P. is coming up for his evidence therein.

11. I am of the opinion that there is no

necessity to recall P.W.6 in order to enable the petitioner to examine her with regard to the document dt.02-12-2012 in as much as in the evidence of P.W.6 already recorded, she has made it clear that respondent herself gave consent for tubectomy operation. It is clear that this application has been filed to prolong the trial.

12. I am therefore satisfied that the Court below had rightly dismissed the said I.A. and its order does not suffer any error of jurisdiction.

13. The Civil Revision Petition is without merit and it is accordingly dismissed at the stage of admission. No costs.

14. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 23-01-2015

vsv