

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2016

Coram

The Honourable MRS.JUSTICE **PUSHPA SATHYANARAYANA**

C.R.P.PD.No.3275 of 2016
and
C.M.P.No.16642 of 2016

Malathi ... Petitioner

vs.

Rajakumaran ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 02.08.2016 passed by the learned Subordinate Judge, Attur in I.A.No.63 of 2016 in H.M.O.P.No.30 of 2000.

For Petitioner : Mr.V.Lakshminarayanan

For Respondent : Ms.Zeenath Begum

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order dated 02.08.2016 passed by the learned Subordinate Judge, Attur in I.A.No.63 of 2016 in H.M.O.P.No.30 of 2000.

2. The petitioner/wife herein earlier filed an application before the Court below to recall PW1 for further cross examination in a

matrimonial proceedings filed by the respondent/husband seeking dissolution of marriage. The said application was dismissed by the learned Subordinate Judge, Attur vide the impugned order on the ground that the second petition on the very same relief is not maintainable. Hence, the revision.

3. Heard both sides.

4. From the perusal of the typed set of papers, wherein the certified copy of the proceedings held before the Court below is filed, it is seen that earlier the petitioner/wife filed I.A.No.98 of 2014 to recall PW1 for further cross examination and the same was allowed on 28.01.2015 whereas the application filed in I.A.No.97 of 2014 for re-opening was kept pending and the same was allowed subsequently on 08.12.2015, nearly after a period of eleven months. Thereafter, when the petitioner/wife was present, PW1 was not present for cross examination. Again on 15.03.2016, the same thing had happened. On 30.03.2016, the Presiding Officer herself was on leave hence the matter was adjourned to 20.04.2016. On that day, for the first time, the counsel appearing on behalf of the petitioner/wife was not ready to cross examine PW1, the application in I.A.No.98 of 2014 to recall PW1 for cross examination was closed. Therefore, the revision

petitioner/wife has taken out another application in I.A.No.63 of 2016 to recall PW1 for further cross examination. However, the said application was dismissed by holding that though the earlier application filed by the petitioner/wife seeking the very same relief was allowed on 28.01.2015, as she was not ready to cross examine PW1 for the past more than one year, resulting in closure of the same on 20.04.2016. It had also further held that the second application on the same relief is not maintainable. As against the same, the present revision is preferred.

5. From the above dates and events, it is clear that PW1 was not co-operating for the cross examination by the petitioner. However, the Court below without noticing the said fact had closed the earlier application, in I.A.No.98 of 2014 on 20.04.2016, filed by the petitioner seeking to recall PW1 for further cross examination, as the counsel for the petitioner was not ready to cross examine.

6. Though it is contended by the learned counsel appearing for the respondent/husband that the second application could be hit by *res judicata*, the same is irrelevant here, as it is only a recall petition.

The Court below had earlier ordered the recall application first,

without ordering the re-opening application. Therefore, for the fault committed by the Court, the parties should not be prejudiced.

7. Hence, in the interest of justice, the following order is passed:

The order passed by the Court below in I.A.No.63 of 2016 dated 02.08.2016 in HMOP No.30 of 2000 is set aside and this Civil Revision Petition is **allowed**. The petitioner is permitted to recall PW1 and cross examine him. It is made clear that the cross examination of PW1 has to be completed on or before 12.01.2017. No costs. Consequently, the connected miscellaneous petition is closed.

vj2

07.12.2016

Index :Yes

Internet:Yes

To

The Subordinate Judge, Attur

PUSHPA SATHYANARAYANA.J

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