

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.R.SHIVAKUMAR.J

C.R.P.PD.No.89 of 2016

S.Muthu Navaneetha Krishnan @ Balaji
S/o.Sampath,
No.108 A, North Street,
Palanganatham,
Madurai

... Petitioner

Versus

R.Srividya
D/o.R.Rajagobalan,
No.138/A1/1, Krishna Kudil,
Ehtirajulu street, Madipakkam,
Chennai 600 091

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order of the learned III Additional Family Court, Chennai dated 24.08.2015, passed in I.A.No.431 of 2015 in O.P.No.3632 of 2012.

For Petitioner : Mr.P.R.Thirneelakandan

ORDER

The husband is the petitioner and the respondent is the wife.
The petitioner filed H.M.O.P.No.525 of 2011 on the file of Family Court

at Madurai for divorce on the ground of cruelty and the respondent suffering from intermittent medical disorder. The wife filed H.M.O.P.No.1125 of 2011 on the file of Family Court, Chennai for restitution of conjugal rights. Subsequently, by virtue of an order passed by the High Court, the H.M.O.P. filed by the husband before the Family Court, Madurai came to be transferred to the Family Court, Chennai and re-numbered as H.M.O.P.No.3632 of 2012. Now, both the cases filed by the petitioner and the respondent are pending on the file of III Additional Judge, Family Court, Chennai.

2. A joint trial of the cases commenced on 10.11.2014 and the respondent, being the person who filed the petition first in point of time, chose to lead evidence first. After the completion of evidence adduced on the side of the respondent herein, the petitioner's evidence began. He examined himself as the first witness on his side. Thereafter, he filed Interlocutory Application No.431 of 2015 for issuing summons to the parents of the petitioner herein, who are residing at Madurai, his own sister, the brother of the respondent herein, who is employed in United States of America, maternal uncle of the respondent and his wife. The said petition was opposed by the respondent by filing a counter. After hearing, the learned trial Judge, by order dated 24.08.2015 allowed the said Interlocutory Application

in part and directed issuance of witness summons to the petitioner's parents and sister and also the respondent's maternal uncle and his wife for their examination as witnesses on the side of the petitioner herein. However, the petition came to be dismissed in part insofar as it relates to the prayer for the issuance of witness summons to the respondent's brother, who is in United States of America.

3. The petitioner had prayed for the issuance of witness summons to the following witnesses.

1. *R.Sampath, S/o.V.S.Ramasamy, No.108, North Street, Palanganatham, Madurai 625 003.*
2. *Mythili, W/o.R.Sampath, No.108, North Street, Palanganatham, Madurai 625 003.*
3. *Gomathi, W/o.Suresh Balaji, Babu Rajendraprasad Road, K4 Rajendraprasad Apartments, West Mambalam, Chennai.*
4. *Gowsik, S/o.Rajagobalan, F1, Royal Nest, Abbiah Reddy Layout, 4th "A" Cross, Kaggadasapura, C.V.Raman Nagar Post, Bangalore 560 093, Karnataka State.*
5. *R.Padmanaban, A-5, Pravinram Apartment, No.18, Amman Koil Street, Vanuvampet, Chennai 600 091.*
6. *Kalyani, W/o.R.Padmanaban, A-5 Pravinram Apartment, No.18, Amman Koil Street, Vanuvampet,*

Chennai 600 091.

Out of the above said witnesses, witness Nos.1 and 2 are the parents of the Revision Petitioner. They are residing in Madurai. The witness No.3 is the sister of the Revision Petitioner. She is residing in Chennai. The fourth witness Gowsik, S/o.Rajagobalan is none other than the brother of the respondent herein. His address is provided as F1, Royal Nest, Abbiah Reddy Layout, 4th "A" Cross, Kaggadasapura, C.V.Raman Nagar Post, Bangalore 560 093, Karnataka State. The fifth and sixth witnesses are none other than the maternal uncle of the respondent/ wife. The fourth respondent is now stated to be employed in United States of America.

4. The learned Trial Judge, after hearing both sides, allowed the application in part and directed issuance of witness summons to all the listed witnesses except the fourth witness Gowsik. Insofar as the prayer for issuance of witness summons to Gowsik is concerned, the petition has been dismissed in part. As against the said order of the trial Court dated 24.08.2015, the present revision has been filed.

5. This Court heard the submissions made by Mr.P.R.Thiruneelakandan, learned counsel for the petitioner and

perused the grounds of revision and also the documents produced in the form of typed set of papers.

6. The petitioner, having filed the Original Petition for divorce on the ground of cruelty and the respondent suffering from intermittent mental disorder to such an extent that the petitioner cannot reasonably expected to live with her, has chosen to examine himself as the first witness on his side. Besides himself, he wants to examine his parents, his sister and also the maternal uncle and maternal uncle's wife of the respondent herein, who would speak about the arrangement of the marriage and mental condition of the respondent leading to the filing of the divorce original petition by the Revision Petitioner and the circumstances relating to the filing of the petition for restitution of conjugal rights by the respondent. He has also chosen to seek issuance of summons to his own sister, who is shown as the third witness in his petition. In fact, as far as witnesses Nos.1 to 3 being his own parents and sister are concerned, he could have very well brought them to the Court even without summons to be examined on his side after presenting the list of witnesses to the Court. However, for the reasons best known to the petitioner, he has chosen to file the Interlocutory Application for issuance of summons not only to the relatives of the respondent, who may not be inclined

to come to the Court on his request, but also to his own parents and sister.

7. Still, the learned trial Judge, on proper consideration of the prayer made by the petitioner, took a view that among the six listed witnesses, five persons can be summoned and directed issuance of summons to all those five witnesses, including the parents and sister of the Revision Petitioner herein. So far as the sixth witness, namely, Gowsik, who is shown as the fourth witness in the list of witnesses found in the petition of the revision petitioner, the learned trial Judge, based on the fact that the summoning of the said witness would be a time consuming exercise involving considerable cost, has chosen to dismiss the said petition. Though the learned trial Judge has not chosen to give yet another additional reason which will justify the finding of the trial Court, this Court is in a position to supplement the same. The very fact that the petitioner has chosen to seek issuance of a summon to a person, who is employed in United States of America, giving his address to be in Bangalore, Karnataka State and the further fact that the said person is sought to be examined, even as per the submissions made by the learned counsel for the revision petitioner, to prove the conversation between himself and the revision petitioner that was allegedly recorded discreetly without his

knowledge, will show that the petitioner wants to harass not only the respondent, but also his brother, who is employed in the United States of America besides attempting at prolongation of the case.

8. A perusal of the contents of the Original Petition filed by both the parties, the interlocutory application for issuance of witness summons the affidavit filed in support of the application seeking issuance of witness warrant, the Counter Affidavit and the fair order passed by the trial Court, will justify the above said observation to decline the issuance of witness summons to the fourth witness cited in the list of witnesses in the above said application.

9. This Court does not find any defect or infirmity, much less non-exercise of jurisdiction or improper exercise of jurisdiction or exercise of jurisdiction not conferred on the trial Court, warranting interference of this Court under Article 227 of the Constitution of India. In all fairness, the trial Court seems to have issued witness summons to five witnesses, out of six witnesses and declined the same in respect of one witness alone on valid ground. Hence, the present revision deserves dismissal at the threshold.

10. Accordingly, the Civil Revision Petition is dismissed. No costs.

03.02.2016

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To

The III Additional Family Court,
Chennai

P.R.SHIVAKUMAR.J

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