



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD) .No.2087 of 2016 and

CMP(MD) .No.9742 of 2016

Indirani

: Petitioner

Vs.

1. Balamurugan

2. Raja

: Respondents

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 17.09.2016 in I.A.No.406 of 2016 in HMOP.No.167 of 2009 on the file of the learned Family Court, Madurai.

For Petitioner : Mr. S. Shanmuga Sundaram

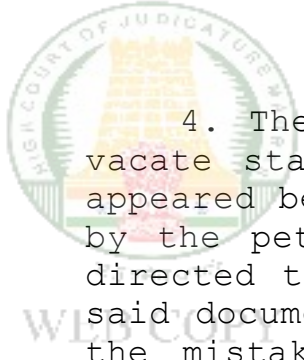
For R1 : Mr. V.P. Rajan

O R D E R

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 17.09.2016 in I.A.No.406 of 2016 in HMOP.No.167 of 2009 on the file of the learned Family Court, Madurai.

2. The petitioner is the respondent in HMOP.NO.167 of 2009 on the file of the Family Court, Madurai filed by the respondent for divorce on the ground of adultery. The petitioner also filed HMOP.No.240 of 2009 for restitution of conjugal rights as well as GWOP.No.13 of 2009 for custody of minor children. All the three petitions were taken together. The respondent filed I.A.Nos.405 and 406 of 2016 to reopen and to mark Xerox copy of the statement given by the petitioner as secondary evidence given before the Inspector of Police, All Women Police Station, Madurai City, South respectively. The petitioner gave evidence and the said petition was closed. The respondent filed counter and opposed both the applications. The learned Judge allowed both applications on the ground that the Inspector of Police appeared before the Court and produced the statement of petitioner and Court directed to keep the said document in the safe custody in the GWOP No.13 of 2009. Now the said document lost from the Court custody. Therefore, allowed both the applications. Against the said order allowing the application in I.A.No. 406 of 2016 in HMOP.No. 169 of 2009 , the petitioner filed present Civil Revision Petition permitting the respondent to mark the xerox copy of all the statement given by her and her relative in the Police Station.

3. The learned counsel for the petitioner submitted that she did not give any documents as alleged by the respondents in the Police station. The alleged statement of the petitioner is not a secondary evidence as contemplated under Section 65 of the Indian Evidence Act. The respondent is not an author of alleged statement and therefore, he cannot be permitted to mark xerox copy of the statement. Already on the memo filed by the petitioner, the learned Family Court Judge rejected the request of the respondent to mark the xerox copy of the statement.



4. The learned counsel for the respondent filed counter with vacate stay petition and submitted that the Inspector of Police appeared before the Court in GWOP and produced the statement given by the petitioner and the same was marked as Ex.A6 in GWOP and directed to be kept as Court document in safe custody. Now, the said document is missing. The respondent cannot be penalized for the mistake committed by the Court and dereliction of duty of Court staff. The learned Family Court Judge has considered these facts allowed both the petitions and subsequently, the Inspector of Police was examined as PW.2 and said statement was marked as Ex.A10 on 28.01.2016. The learned counsel appearing for the petitioner also cross examined PW.2. The learned counsel for the respondent contended that the Civil Revision Petition has become infructuous. Suppressing that petitioner filed Civil Revision Petition and obtained interim stay. Already this Court directed the Family Court to dispose the HMOP.No.167 of 2015 on or before 31.10.2015 and prayed for dismissal of this petition.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. From the typed set of papers filed by the respondents and the materials available on record it is seen that the Inspector of Police an earlier occasion appeared and produced original statement of petitioner and others given in Police Station and the Court directed document to be kept in safe custody. From the order of the learned Judge it is seen that the said document was handed over to then Sheristhar to be kept in safe custody. Now, original documents are missing from the Court and Sheristhar to whom document was handed over is already retired and no departmental proceedings was initiated.

7. In the circumstances learned Judge has rightly allowed both the applications. In addition to above now, the Inspector Police by viz., Hemamala was examined as PW.2 on 27.09.2016 and Xerox copies of the statement and other documents were marked as Ex.A10 series and the learned counsel for the petitioner also cross examined the said Inspector of Police.

8. In the circumstances, the Civil Revision Petition itself has become infructuous and therefore dismissed. The learned Judge is directed to dispose the HMOP as expeditiously as possible in any event not later than 31st March 2017. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

The Family Court, Madurai.

+1 cc Mr.V.P.RAJAN, ADVOCATE, SR.NO:83144

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