

HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL REVISION PETITION No.4422 OF 2016

ORDER:

Heard learned counsel for the petitioner and perused the material available on record.

This civil revision petition is directed against the order in I.A.No.586 of 2016 in F.C.M.C.No.32 of 2015 dated 27.07.2016 on the file of the Court of Judge, Family Court-cum-III Additional District Judge, Vizianagaram (for short, trial Court).

Learned counsel for the petitioner submitted that though there are no grounds for receiving the documents and recalling the witness, learned trial Court has erred in allowing the above application filed by the respondent. Learned counsel further submitted that C.D. submitted before the trial Court is an empty one and there are no photographs in it.

The main ground raised by the learned counsel for the petitioner herein before the trial Court is that to fill up lacunas in the evidence of the respondent, the documents are filed at a subsequent stage and the respondent did not exercise due diligence in filing those documents at the earlier stage and that she did not state where those documents were misplaced and why they did not file earlier.

The trial Court, on consideration of the contentions raised by both parties, allowed the application observing that documents 1 to 4 are issued by an independent authorities

and document No.5 i.e. photographs show the marriage between the petitioner and respondent and that when the positive photos are backed up with compact disc, the genuineness of positive photos cannot be doubted.

Learned counsel for the petitioner submitted that the respondent has filed O.P. for maintenance and the same is coming up for arguments and at that stage, the respondent-wife filed the petition to cover up the lacunas in her evidence. Learned counsel for the petitioner further submitted that as per Order XVIII Rule 17 C.P.C., the respondent has to give sufficient reasons why the documents could not be filed at the earlier stage with the list of documents. In support of his contention, he placed reliance on the judgment of this Court in **Guduru Nirmala v Guduru Ashok Kumar**¹. This Court, while deciding the revision, relied on the decision of the Apex Court in **K.K.Velusamy v. N.Palani Samy, Guduru Nirmala v Guduru Ashok Kumar**, at para 16 and held as follows:

“16. We may add a word of caution. The power under [section 151](#) or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bonafide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does

¹ LAWS(APH) 2014-8-103

so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application. “

In para 16 of the above judgment, various circumstances under which the documents can be lead in evidence have been explained. The facts and circumstances of the instant case clearly reveals that the documents can be received by the Court, as the documents could not be traced at the earliest point of time by the respondent and more over the documents are essential to prove the marriage of the respondent. The documentary evidence sought to be produced by the respondent cannot be shut on the ground of laches of delay in producing the documents at the fag end of the trial.

The documents sought to be marked are relevant and why those documents could not be filed earlier are being explained by the respondent and the same has been observed by the trial Court. In fact, the documents sought to be marked are authentic documents and on that reason, the trial Court permitted those documents to be received and further those documents are necessary to prove the marriage between the parties. The trial Court, on consideration of those facts, had permitted those documents to be received in the evidence by using its judicial discretion basing on the facts and circumstances of the case. Therefore, the documents permitted to be received by the trial Court are not meant to fill up lacunas in the evidence of the respondent in the light of the above circumstances. The trial Court has also clearly observed that the petitioner would have an opportunity to cross-examine the witnesses to disprove those documents if they are not relevant for the purpose of the case.

On perusal of the material available on record and considering the facts and circumstances of the case, I do not see any valid grounds to interfere with the impugned order.

Accordingly, the civil revision petition is dismissed at the admission stage. However, the trial Court is directed to verify the CD before admitting it into evidence whether it contains any material or not as it is an electric record and to dispose of F.C.M.C.No.32 of 2015 as expeditiously as

possible. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

G.SHYAM PRASAD, J

17.09.2016
Kvrm/tjmr

