

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition Nos.5067 of 2015, 5116 of 2015 and 5117 of 2015

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COMMON ORDER:

All these three revisions filed by the respondent-wife under Article 227 of the Constitution of India are directed against the order dated 11.08.2015 of the learned Principal District Judge, Eluru of West Godavari passed in I.A.Nos.3542 of 2012, 3543 of 2012 and 2341 of 2012 in G.W.O.P.no.1150 of 2011, respectively filed to (i) re-open the evidence on the side of the petitioner/husband; (ii) recall him (PW1) to give further evidence with reference to documents; and (iii) grant leave to the petitioner/husband to file documents mentioned in the petition list.

2. I have heard the submissions of the learned counsel for the revision petitioner/wife ('the wife', for brevity) and the learned counsel for the respondent/husband ('the husband', for brevity). I have perused the material record.

3. The facts necessary for consideration and the facts that lead to the filing of these three revisions by the wife, in brief, are as follows:

The husband filed the GWOP for the custody of the minor son aged eight years as on the date of filing of the petition in the year 2015. After the son was born, there were serious disputes between the spouses. The disputes had lead to estrangement between the spouses and the parties are living separately. The son of the parties is in the custody of the wife. Earlier, the Court below had allowed all the three petitions. However, the revisions filed by the wife before this Court in C.R.P.nos.6218, 6245 and 6263 were allowed, by a common order dated 12.11.2014; and, the said IAs were remitted to the Court below for *de novo* disposal on merits and in accordance with the procedure established by law. After such remittance, the Court below had given an opportunity to the wife to file counters; and, after hearing the learned counsel for both the sides, the Court below had allowed all the

three petitions, subject to terms. Thus, by the orders impugned in these revisions, all the three petitions filed by the husband were allowed on condition that he shall pay costs of Rs.1,000/- to the wife within the time stipulated in the said orders. The learned counsel for the wife received the costs without prejudice to the rights of the wife to prefer revisions before this Court against the orders in the IAs. Therefore, the aggrieved wife is before this Court.

4. Before proceeding further, it is necessary to state the cases of the parties. The case of the husband, in support of his request in the three applications, in brief, is this:

The marriage between the spouses was consummated. After completion of necessary ceremonies, they had left for USA on 26.07.2002. For some time, they lead a happy marital life. Out of the lawful wedlock, the wife had given birth, on 14.12.2004, to a male child by name V. Suraj Kumar at Michigon, USA. In the circumstances stated in the GWOP, the husband is constrained to file the petition for the custody of the minor son. The wife had made false and reckless allegations against the husband and is intentionally creating problems in the matrimonial life and had kept his son away from him. She is making false and wild allegations knowing fully well that the said allegations are false. To substantiate the case of the husband, he was advised to file the petition listed documents, viz., e-mail communications exchanged between the parties, the copies of profiles from the face book, the documents showing online money transactions, railway tickets, the medical history record of the minor son, the record relating to the job performance of the husband, the copies of documents showing online chatting, the document showing postal savings made by the husband for the welfare of the minor child, the copy of the complaint with postal acknowledgment, the school fee receipts of the minor son etcetera. The petitioner is also advised to get the evidence reopened and recall him for the purpose of giving further evidence in respect of the said documents. Hence, these three petitions are filed.

5. The case of the respondent/wife, in brief, is this:

The averments in the affidavit of the husband filed in support of the petitions are false. The petitioner/husband was examined as PW1 on 03.07.2012 and exhibits A1 to A5 were marked on his side. He ought to have filed all his documents along with GWOP, if really the documents are of important nature. The documents do not relate to the issue involved in the *lis*. There is no whisper about these documents in the petition of the husband. There is no explanation for the delay in filing the documents. The petitioner is not entitled to file the petition for grant of leave to file the documents; and he is not entitled to make requests to reopen the evidence and to recall him for giving further evidence. The petitioner is not competent to prove electronic documents. The electronic documents are to be proved by examining the author. The documents are fabricated and the same are inadmissible in evidence.

6. As already noted, on merits, the trial Court had allowed the petitions of the husband.

7. The learned counsel for the parties made submissions in line with the respective contentions of the parties.

7.1 The further contentions of the learned counsel for the wife are as follows: 'The petitions ought to have been dismissed by the learned District Judge after this Court had remitted the matter to the District Judge after setting aside the earlier orders of the learned District Judge passed in the self-same applications. The learned District Judge had erroneously allowed the applications by giving reasons in a different format. The petitions were allowed in a routine manner. The petitions are filed to fill up the lacunae in the evidence. By filing a petition to recall him, the husband intends to mark the electronic documents running into hundreds of pages though the said documents are irrelevant and have no bearing on the issue involved in the *lis*. The documents were obtained by illegally entering into the g-mail account of a third party and were downloaded. No leave should be granted for filing such documents, which are tainted with illegality. The petitions are intended to drag on the proceedings. The documents would show that they

were obtained even by the year 2000 itself. No explanation is forthcoming as to why the said documents could not be filed earlier. The documents are irrelevant and inadmissible as the question involved in the OP is in regard to the father's entitlement to have the custody of the minor son. The petitioner/husband is filing petitions after petitions to procrastinate the matter. Even though the visitation rights were granted to the husband, he had never availed the benefit of the said order. The main OP is intended to harass the wife. The petitioner (husband) is not competent to prove the documents.'

7.2 On the contrary, the learned counsel for the husband, while reiterating the case of the husband and while supporting the orders of the Court below had urged that the Court below, on considering the facts correctly and the circumstances in a proper perspective, had passed reasoned orders in all the applications by exercising the discretion judiciously and that the well-reasoned orders of the Court below do not warrant interference in these revisions.

8. I have bestowed my attention to the facts. I have noted the submissions.

8.1 In a OP for custody of the child, the husband with an intention to further substantiate his case had filed three applications, to (i) re-open the evidence; (ii) recall him; and (iii) grant leave to file further documents, the details of which are already stated supra. As the matter is at the stage of trial/enquiry, the learned District Judge had allowed the applications by passing reasoned orders. The main contention of the wife is that the petitions are belated and are intended to harass her and that the proposed evidence is not relevant and is inadmissible and that the documents, which are now sought to be filed, are obtained by illegal means and that the husband is not competent to prove the electronic record and that the authors of the said records have to be examined to prove the said electronic record. Be it noted that at the stage of considering the merits of the instant interlocutory applications, this Court need not go into the probative value of the documents as the said aspect has to be considered by the Court below at an appropriate later stage. Further,

the Court below has to consider the relevancy and admissibility of the documents at a stage when the proposed documents would be tendered through PW1-husband for being marked. At the time of granting leave, the Court has to consider the question as to whether leave should be granted or not for filing the documents. Further, to compensate the loss and hardship that may be caused on account of the consequential delay in disposal of the OP, the Court below had imposed costs of Rs.1,000/- each, while allowing the three petitions and the costs are also received by the learned counsel for the wife though without prejudice to the rights and contentions of the wife to prefer revisions before this Court. The Court below had recorded a finding that valid and sufficient reasons are assigned by the husband for non-production of the documents earlier; further, the Court below had accepted the contention of the husband that he was not properly guided by his counsel and that, therefore, he could not file the documents earlier even though they are in his possession by the date of his evidence. When the Court below having exercised its judicial discretion had allowed the petitions by assigning valid reasons, this Court is of the view that such a well reasoned order brooks no interference. Having regard to the facts and the above reasons, this Court finds that the orders impugned in the revisions do not warrant interference and that the Court below need not be faulted for allowing the applications of the husband.

9. Accordingly, all the revisions are dismissed being devoid of merit. Having regard to the facts of the case and the settled legal position that matrimonial OPs and OPs, which are concerned with allied matters shall be disposed of expeditiously, the Court below is directed to dispose of the main OP, as expeditiously as possible, and preferably, within two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

01st June, 2016
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