

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.283 of 2014
& M.P.No.1 of 2014

1.E.Kalaiko
rep. By power agent
R.Elango

2.R.Elango

.. Petitioners

Vs.

Mangalapriya

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the fair and decretal order dated 29.11.2013 made in E.A.No.178 of 2013 in E.P.No.109 of 2012 in H.M.O.P.No.544 of 2010 on the file of the Additional Subordinate Judge, Chengalpattu.

For Petitioners : M/s.Jayalakshmi
for M/s.Paul And Paul

For Respondent : M/s.Uma Vidhyabathi
for M/s.Geetha Rama Seshan

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 29.11.2013 made in E.A.No.178 of 2013 in

E.P.No.109 of 2012 in H.M.O.P.No.544 of 2010 on the file of the Additional Subordinate Judge, Chengalpattu.

2.The first petitioner/judgment debtor is the respondent and respondent/decreed holder is the petitioner in H.M.O.P.No.544 of 2010 on the file of the Principal Subordinate Judge, Tiruchirapalli. The respondent filed the said H.M.O.P for restitution of conjugal rights. In the said O.P, she also claimed maintenance for herself and her minor son. The learned Judge, by the decree dated 29.08.2011, ordered maintenance to the respondent. The first petitioner has not challenged the order awarding interim maintenance to the respondent by way of appeal or revision. The first petitioner also did not pay the maintenance so ordered. The respondent filed E.A.No.93 of 2012 in H.M.O.P.No.544 of 2010 for transmitting the decree from Subordinate court, Tiruchirapalli to the Principal Subordinate Court, Chengalpattu. After transmitting the decree, the respondent filed E.P.No.109 of 2012 on the file of the Principal Subordinate Court, Chengalpattu under Order 21 Rule 11(2) read with Section 151 C.P.C for attachment and sale of the immovable properties mentioned in the Schedule for realising the amounts due under the decree. According to the respondent, as on

21.03.2012, the amounts due is Rs.13,40,000/- and the total amount payable is Rs.13,41,545/-. The first petitioner entered appearance through Advocate and filed counter affidavit and is contesting the E.P. The second petitioner, who is the father of the first petitioner filed E.A.No.178 of 2013 under Order 3 Rule 2 C.P.C to recognise him as Power Agent of the first petitioner/judgment debtor. According to the second petitioner, the first petitioner is residing in U.S.A and he has appointed the second petitioner as Power Agent to represent and proceed with the E.P. According to the second petitioner, father of the judgment debtor, unless he is recognised as Power Agent of the petitioner, he will be put to irreparable loss and no prejudice will be caused to the respondent.

3.The respondent filed counter affidavit and submitted that in the matrimonial disputes, power agent cannot represent one of the parties, since the relationship between the husband and wife is very confidential. The petitioner is not contesting the main H.M.O.P filed by the respondent for restitution of conjugal rights. Only to drag on the E.P and to avoid payment of maintenance, he has come out with the present petition. The first petitioner has not paid any maintenance to the respondent as per the decree passed in

H.M.O.P.No.544 of 2010 and prayed for dismissal of the said application.

4.The learned Judge, by the order dated 29.11.2013, considering the the averments in the affidavit and counter affidavit, dismissed the application, holding that if the petition is allowed, the respondent/decreed holder and her son will suffer irreparable loss and hardship and she will be harassed and driven from pillar to post for livelihood of herself and her son. The learned Judge also held that the petition is filed only to harass the respondent/decreed holder.

5.Against the said order dated 29.11.2013 made in E.A.No.178 of 2013 in E.P.No.109 of 2012 in H.M.O.P.No.544 of 2010, the present Civil Revision Petition is filed by the petitioners.

6.The learned counsel appearing for the petitioners submitted that as per the Order 3 Rule 1 and 2 C.P.C, a party to the proceedings can be represented by an authorised agent. The learned Judge failed to properly appreciate the above provision, while dismissing the application. The second petitioner, who is the

father of the judgment debtor/first petitioner will be greatly prejudiced and will not be in a position to contest the E.P. The learned Judge had exceeded his power by dismissing the application. It is well settled by judicial pronouncements that a party can be represented by power agent, who is recognised agent of the party as per the Order 3 Rule 2 C.P.C. In support of her contention, the learned counsel for the petitioner relied on the judgment reported in **CDJ 2011 MHC 2263 (Terance Alex Vs. mary Sowmya Rose)**. The 18th paragraph is extracted hereunder:

“18.Thus, it is now well settled legal position that there is no legal impediment under the Family Courts Act, for a Power of Attorney to appear on behalf of the Principal and the only legal embargo is that the recognised agent should not be a legal practitioner. Any person, not being a legal practitioner, can be nominated as an agent under Order 3, Rule 2, C.P.C., to prosecute or defend the parties and until the Family Court passes any specific order, directing appearance of the party, depending upon the facts and circumstances of the case.”

7.Per contra, the learned counsel appearing for the respondent submitted that the present proceedings is a matrimonial proceedings. The first petitioner/judgment debtor, did not contest the main H.M.O.P filed for restitution of conjugal rights and payment

of maintenance. He has not challenged the said decree. Only to delay the payment of maintenance, the present application has been filed. The learned counsel for the respondent also submitted that the first petitioner/judgment debtor himself filed O.P.No.3897 of 2017 against the respondent/decree holder on the file of VI Family Court, Chennai for decree of divorce and the said H.M.O.P is posted to 14.12.2017 for first hearing. The first petitioner/judgment debtor, while he is appearing before the VI Family Court, Chennai, will not have any difficulty to appear before the Subordinate Court, Chengalpattu to contest the E.P. The learned counsel for the respondent produced the copy of the petition received in O.P.No.3897 of 2017 filed by the first petitioner for the hearing dated 14.12.2017 and prayed for dismissal of the Civil Revision Petition.

8.Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

9.The issue in the Civil Revision Petition is whether the second petitioner, who is the father and Power Agent of the judgment debtor/first petitioner can be permitted to represent the

first petitioner in the E.P.No.109 of 2012 filed by the respondent/decree holder. The second petitioner filed the above E.A.178 of 2013 under **Order 3 Rule 2 C.P.C.** The **Order 3 Rule 1 and 2 of C.P.C** is extracted hereunder:

“1. Appearances, etc., may be in person, by recognized agent or by pleader— Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a part in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Provide that any such appearance shall, if the Court so directs, be made by the party in person.

2. Recognized agents— The recognized agent of parties by whom such appearances, applications and acts may be made or done are—

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.”

10.As per the provisions, the power agent can represent

a party, except whether otherwise expressly provided by any law for the time being in force, be made or done by the party in person. In the present case, the proceedings is under Family Court Act.

Whether in a Family Court proceedings, an agent can be granted permission to defend the suit by an authorised agent? This Court in the judgment reported in **2003 1 MLJ 182 (Pavithra, represented by Power Agent S.Rajkumar Kalingarayar Vs. Rahul Raj)** has held as follows:

“14. Order 3 Rule 1 of C.P.C empowers a party in a suit or proceedings to be represented by a pleader, but so far as the proceedings in the Family Courts are concerned, the right of representation by the pleader does not exist. The operation of Order 3, Rule 1 is subject to any law for the time being in force. In addition to the said exclusion in the code, Section 13 of the family Courts Act prohibits the operation of Order 3 Rule 1 to the extent that the case being represented by the legal practitioner. The recognised agent appointed under Order 3, Rule 2 stands on a different footing from pleader. However, recognised agent cannot be a legal practitioner. The embargo on the appearance of legal practitioners should not be extended to recognised agent. There is no prohibition in the Act or Rules to a petition being filed by an authorised agent who is not legal practitioner. The recognised agent can prosecute or defend or represent until Family Court passes specific order directing the party to appear in person, depending upon the facts and stage of the case. Personal appearance of the parties is inevitable to comply with mandatory provisions of the Act. In this case, the authorised agent has filed a petition seeking permission to defend the case on the ground that she is not able to come to India and contest

the case. Such a permission cannot be granted. Hence, the said petition is liable to be rejected and rejected accordingly.”

This Court held that in the Family Court proceedings, the application for grant of permission to defend the suit by an authorised agent on the ground that the party being out of India was unable to contest the suit is not acceptable and is liable to be dismissed. This order is squarely applicable to the facts of the present case. The order of this Court reported in **CDJ 2011 MHC 2263** is not applicable to the present case as in the said order, general principle with regard to representation by a power agent in Family Court has been decided. In the order reported in **2003 1 MLJ 182**, this Court specifically held that the request of agent to represent the principal on the ground that principal is in a foreign country and unable to come to India and contest the case, cannot be granted. In the present case, already the first petitioner had filed O.P.No.3897 of 2017 by himself against the respondent for divorce on the file of the VI Family Court, Chennai. There will not be any difficulty for the first petitioner to contest the E.P proceedings himself while he is able to personally proceed with the O.P.No.3897 of 2017 filed by him for divorce on the file of the VI Family Court, Chennai. In the circumstances, I find

no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 29.11.2013.

11.In the result, this Civil Revision Petition is dismissed.

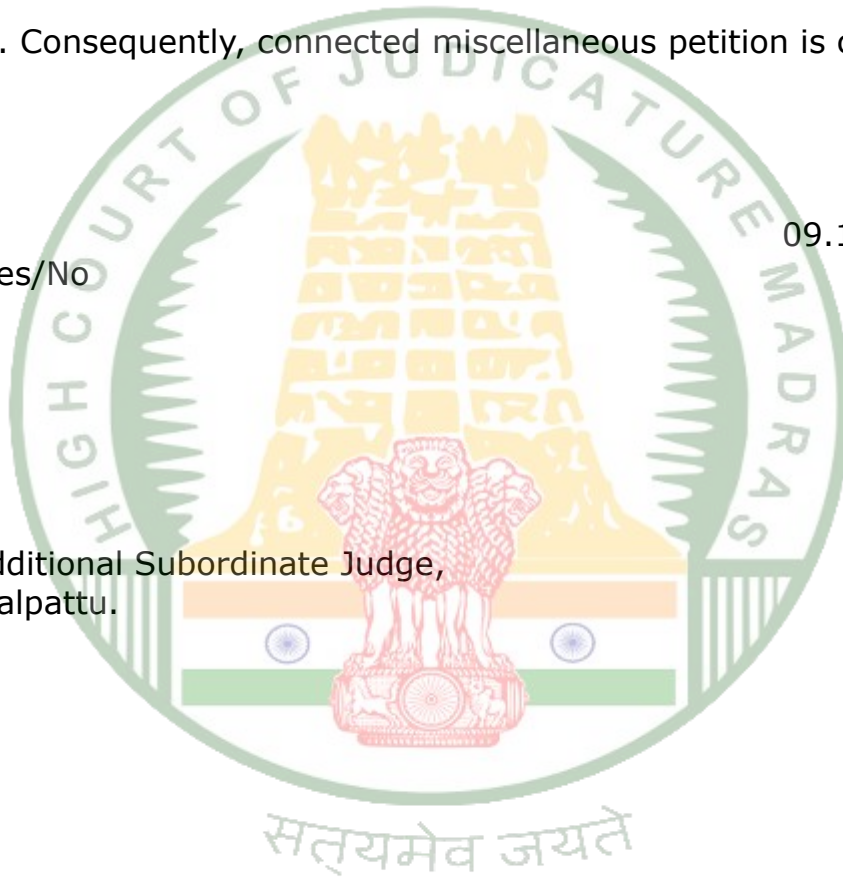
No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
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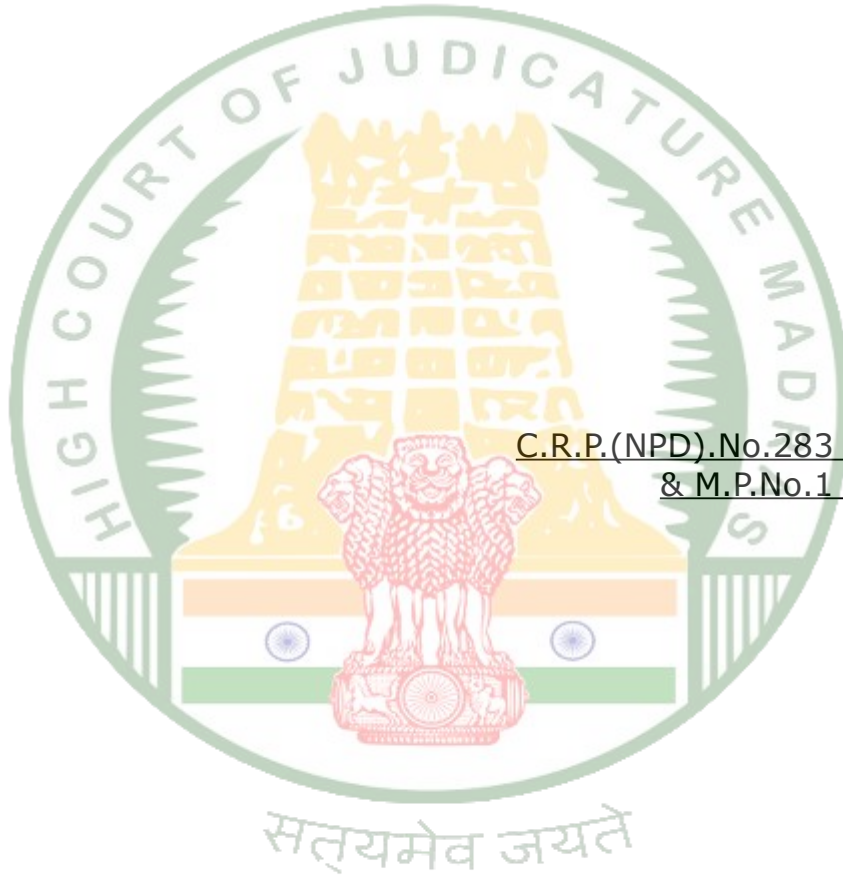
The Additional Subordinate Judge,
Chengalpattu.



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V.M.VELUMANI,J.

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