



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2017

CORAM :

THE HONOURABLE DR.JUSTICE **G. JAYACHANDRAN**

C.R.P (PD) (MD) No.1105 of 2017

and

C.M.P (MD) No.4938 of 2017

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Sumathi

... Petitioner

vs.

Viswanathan @ Ramesh

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the returned endorsement dated 07.04.2017 in petition for re-open in I.A. Unnumbered/2017 in H.M.O.P.No.872 of 2014 by the Family Court, Tiruchirappalli.

For Petitioner : Mr.S.Rajaprabu

O R D E R

The revision petitioner is the respondent in H.M.O.P.No.872 of 2014. After the examination of witnesses on both sides, the Family Court, Tiruchirapalli, has posted the matter for arguments on 25.01.2017 and thereafter, after hearing the arguments of the counsel for the petitioner, for the arguments of the respondent, the matter has been adjourned to 03.03.2017, 06.03.2017, 28.03.2017 and 07.04.2017 respectively. At that juncture, the respondent in HMOP has filed an application to re-open which has been dismissed by the Family Court without taking the application on file.

2.The reason stated in the order which is impugned in the present revision petition is as under:-

The petition for divorce filed by the husband was taken up for enquiry on 17.06.2015 and the petitioner/husband was examined. After few adjournments, the cross-examination was completed and after closing of the petitioner side evidence, the respondent who is the revision petitioner herein, has filed an application for production of document, but did not insist upon that application which happened to be dismissed later as not pressed on 22.08.2016. Thereafter, from 07.11.2016, the case has been adjourned for respondent side evidence. After examining the respondent side evidence, the Family Court closed the respondent side evidence and posted the matter for arguments. Due to change of counsel on behalf of the respondent/wife, after hearing the petitioner/husband, the matter was adjourned for the arguments of the respondent/wife. Though four adjournments were given for



respondent's arguments, on the 4th day of adjournment, this application has been filed to re-open the case with deliberate intention to delay the proceedings. The Trial Court therefore, rejected the application since there was no prima facie requirement to entertain this application.

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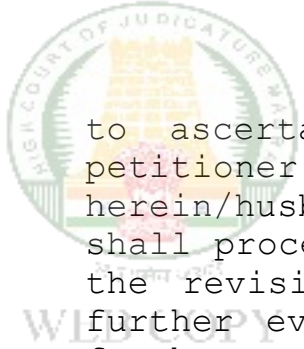
3. The learned counsel appearing for the revision petitioner submits that though the petitioner ought to have marshalled her side witnesses at the earliest, failed to do so. However, her right to defend the case in the matrimonial dispute need not to be shunted on technical reason. An opportunity to put forth her case may be given to meet the ends of the justice.

4. It is conceded by the counsel for the petitioner that the petition to re-open is bereft of details and list of further evidence not been furnished. However, for effective adjudication, an opportunity may be given to the revision petitioner and if she fails to avail the said opportunity, the Family Court shall proceed in accordance with law.

5. The revision petitioner herein has filed a very detailed counter to the divorce petition. She had been effectively contesting the matter all along. But, when the matter was posted for her side evidence, she has taken enough adjournments to examine herself and thereafter, she has not let in any further evidence on her behalf which has prompted the Family Court to close her side evidence and post the matter for arguments. Even after four adjournments, she has not put forth her case but has belatedly filed application for re-open with bereft of details without even furnishing the list of witnesses she proposed to examine. Under these circumstances, the true intention of the petitioner could not be found in her favour.

6. But the counsel for the revision petitioner submits that one more opportunity for the revision petitioner to put forth further evidence on her behalf may not prejudice the respondent herein/husband, if no further delay is caused on behalf of the revision petitioner and he also undertakes that if an opportunity is given to let in further evidence within 30 days from the date of this order, she will complete her side evidence including arguments.

7. In the light of the above submission, the docket order passed by the Family Court on 07.04.2017 is set aside. The revision petitioner herein is directed to re-present the petition for re-open the evidence and furnish list of witnesses to be relied along with the petition. On such representation, the Family Court, Tiruchirappalli, is directed to take the petition on file. On the day of re-representation of the petition, the witnesses proposed to be examined should be present for the Court



to ascertain the bona fide and genuineness of the revision petitioner and after affording opportunity to the respondent herein/husband to cross-examine those witnesses, the Family Court shall proceed further. In default of any of the above conditions, the revision petitioner shall lose her right to put forth any further evidence and the Family Court is at liberty to proceed further and dispose of HMOP on merits.

With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. Registry is directed to return the original papers filed along with this revision after getting attesting copies of the same.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Family Court Judge,
Family Court,
Tiruchirappalli.

+1cc to M/S.S.Rajaprabu, Advocate SR.No. 59704

C.R.P (PD) (MD) No.1105 of 2017

nbi
JM/SV/SAR 2/14.06.2017/3P/3C