



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P. (MD) .Nos.758 and 759 of 2017

and

C.M.P (MD) No.3460 of 2017

Jeya Manjula

..RevisionPetitioner /Petitioner/Respondent
In both the petition

Vs.

G.Aji Kumar

...Respondent/Respondent/Petitioner
In both the petition

PRYER :These Civil Revision Petitions are filed under Article 227 of Constitution of India, to allow the Civil Revision Petition and set aside the cost of Rs.5,000/- imposed while allowing the Application in I.A.No.532 and 533 of 2016 in H.M.O.P.No.33 of 2010 on the file of the Sub-Court, Kuzhithurai dated 08.11.2016.

For Petitioner

In both the petition : Mr. C.K.M.Appaji

For Respondent

In both the petition : Mr.A.Thiruvadikumar
for Caveator

COMMON ORDER

These Civil Revision Petitions are filed against the order in the matrimonial dispute. The wife, who is the respondent, has filed an application seeking leave of the court to examine her brother as witness. The Trial Court has allowed an application I.A.No.353 of 2014, after examination of her brother on her behalf. The matter was posted for arguments. At this juncture, she has again filed an another application for re-open and examine her as a witness.

2.The Trial Court, after perusing the petition filed for divorce by the husband as early as in the year 2010 which was kept pending for nearly 7 years at the instance of the revision petitioner herein, give opportunity to the revision petitioner to be examined as a witness, allowed of the application, despite pointing out the belated tactics by her in the proceeding. While being so, the Trial Court imposed a cost of Rs.5,000/- to be paid to the respondent herein, who is the petitioner in H.M.O.P.No.33 of 2010.



3.The order of the Trial Court re-assigning I.A.No.532 of 2016 in H.M.O.P.No.33 of 2010 in the result of the application allowed on payment of cost of Rs.5,000/- to the respondent/petitioner in H.M.O.P.No.33 of 2010 on or before 23.11.2016, failing which I.A.No.532 of 2016 in H.M.O.P.33 of 2010 stands dismissed. Agrieved by the order of the Trial Court imposing the cost of Rs.5,000/- in I.A.No.532 and 533 of 16. The present revision petition has been filed on the ground that the revision petitioner was attending the court regularly which due to illness, he has not able to defend her case therefore sought leave of the court to permit her brother to be examined as RW-1 on her behalf and the same was allowed. But, now after recovering from the illness she wants to re-open the case and give evidence as PW-2 to defend herself in the dispute.

4.Since, she has produced medical records, the Court imposed a sum of Rs.5,000/- for each of the applications namely re-open and leave to examine her witness. It is contented by the learned counsel for the revision petitioner that the financial status of the rival parties have taken note by the court and has imposed heavy cost of Rs.5,000/- which is very excessive that too, for a deserted wife to meet.

5.However the learned counsel for the respondent submitted that the date and event which the case has passed through earlier will clearly establish that there is no bonafide in the application filed by the revision petitioner. Though the court should have rejected the plea in order to give a fair opportunity to give evidence provided she pay cost for the respondent due to non - prosecution and the delay caused. There is no error in the order of the Trial Court and therefore the revision petition has to be dismissed with cost.

6.Taking note of the rival contention this court is of the view that the revision petitioner was given enough opportunity to defend her case in the matrimonial dispute. However, she has given so many excuse for not availing the opportunity.

7.The Trial Court, after considering the facts of the case and to give just and fair opportunity to the revision petitioner allowed to re-open the case and adduce evidence on special payment of cost.

8.This Court finds no error in the said order. Hence, this revision petitions are dismissed. It is brought to the notice of this court that the time for payment of cost has already expired. If sufficient time is granted, the revision petitioner will pay the same and avail the opportunity given by the Trial Court to



putforth the case. At this request, the time for payment of cost is fixed as 28.04.2017. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(T&P)

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Sub Assistant Registrar

To
The Subordinate Judge,
Kuzhithurai.

+1CC to M/S.C.K.M. Appaji, Advocate, SR.No. 51892

+1CC to M/S.A.Thiruvadi Kumar, Advocate, SR.No. 51928

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cp/mm

JM/RSK/SAR 4/27.04.2017/3P/4C