

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4037 Of 2017

ORDER:

1 This Civil Revision Petition, under Article 227 of the Constitution of India is filed challenging the order dated 22.12.2016 passed in I.A.No.153 of 2016 in O.S.No.56 of 2010 on the file of the Court of the Junior Civil Judge, Nandalur.

2 Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3 A perusal of the record reveals that the petitioner filed O.S.No.56 of 2010 on the file of the Court of the Junior Civil Judge, Nandalur against the respondent seeking perpetual injunction. After closure of the evidence on petitioner's side, the respondent filed his chief examination affidavit. For one reason or the other, the respondent did not choose to appear before the trial Court for the purpose of cross examination. Therefore, his chief examination affidavit was eschewed. Thereafter, the respondent filed I.A.No.153 of 2016 under section 151 CPC seeking permission of the Court to examine his son on his behalf. The trial court allowed that petition. Hence the present Civil Revision Petition by the petitioner/plaintiff.

4 The defendant is at liberty to examine the witnesses of his own choice on his behalf. But he is not entitled to ask the court to examine his son on his behalf. The trial court, without taking into consideration the legal implications, allowed the petition.

5 Viewed from any angle, the impugned order is not maintainable. If the impugned order is allowed to stand, it would amount to miscarriage of justice. Taking into consideration the facts

and circumstances of the case, I am of the considered view that this is a fit case to set aside the impugned order.

6 Accordingly, this Civil Revision Petition is allowed, setting the order dated 22.12.2016 passed in I.A.No.153 of 2016 in O.S.No.56 of 2010 on the file of the Court of the Junior Civil Judge, Nandalur is hereby set aside. However, setting aside of the impugned order does not preclude the respondent / defendant to examine the witnesses of his own choice on his behalf in their individual capacity. No order as to costs. As a sequel, miscellaneous petition, if any, pending in this Civil Revision Petition shall stand closed.

Date: 30.11.2017
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T. SUNIL CHOWDARY, J.