

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.4677 and 4678 of 2017

COMMON ORDER:

These two civil revision petitions are filed by the unsuccessful petitioner-husband having been aggrieved of the separate orders, dated 07.07.2017, of the learned Judge, Additional Family Court, Hyderabad, passed in IA.Nos.613 & 614 of 2017 in OP.No.1823 of 2014 respectively filed for reopening the evidence on the side of the wife, who is the petitioner in the OP, and recalling PWs1 to 3 for cross examination on behalf of the husband, who is the respondent in the OP.

2. I have heard the submissions of Sri J. Prabhakar, learned counsel appearing for the revision petitioner-husband and of Sri M.A.K Mukheed, learned counsel representing Sri P. Chandra Sekhar, learned counsel for the respondent-wife. I have perused the material record.

3. The parties shall hereinafter be referred to as the petitioner-wife and the respondent-husband as arraigned in O.P.No.1823 of 2014.

4. The introductory facts, in brief, are as follows: 'The wife brought the above OP before the Additional Family Court against the husband under the relevant provisions of the Muslim Marriage Act, 1939, for dissolution of the marriage. The husband is resisting the OP. While so, after the right of the husband to cross examine the wife and her witnesses, PWs1 to 3, in the afore-stated OP was forfeited, he filed the above-mentioned two IAs for reopening the evidence and recalling PWs1 to 3 for cross examination on his behalf. The said petitions are resisted by the wife by filing counters. By the orders impugned in these revisions, the trial Court dismissed both the petitions. Hence, the husband is before this Court.'

5. The case of the husband in support of his requests in the two petitions, in brief, is this: - 'An advocate commissioner was appointed to record the cross examination of PWs1 to 3 and the OP was posted to 12.05.2017 for cross examination of the said witnesses. As the counsel was sick he could not appear before the advocate commissioner and cross examine the said witnesses. Hence, the advocate commissioner filed a report closing the cross examination of the said witnesses. Non cross examination of the said witnesses was only due to the above stated reason but not due to any intentional and wanton reasons on the part of the husband. The cross examination of the said witnesses is essential for establishing the defence of the husband. If an opportunity is not granted he would suffer serious and irreparable loss.'

6. The wife filed a detailed counter stating the chronology of events and bringing to the fore the conduct of the husband in dragging on the matter endlessly and prayed for dismissal of the petitions filed by the husband.

7. At the hearing, Sri J. Prabhakar, learned counsel for the husband, while reiterating the pleaded case of the husband requested that an opportunity may be granted to the respondent-husband and further stated that the husband is prepared to abide by any conditions that may be imposed by this Court.

8. Learned counsel for the wife strongly opposed for granting the reliefs to the husband by drawing the attention of this Court to the observations of the trial Court in the impugned orders and the conduct of the husband in the matter.

9. No-doubt the observations in the impugned order bring to the fore the following facts: - 'The husband having entered appearance has failed to file his counter in the OP despite imposing costs. Hence, he was set *ex parte*. Later, at his request, the *ex parte* order was set aside. When PW1 was examined, he did not cross examine her despite granting sufficient opportunities and his right

to cross examine her was forfeited, on 21.11.2016. Later, PWs2 & 3 were also examined; and, they were also not cross examined. Hence, his right to cross examine them was forfeited, on 07.12.2016. Later he filed applications for reopening evidence and recalling PWs1 to 3. Though the petitions were allowed he failed to pay batta of Rs.2,000/- payable to each of the said witnesses. Though an undertaking was given by the counsel to cross examine the witnesses without fail, the said undertaking was not adhered to. Therefore, the advocate commissioner closed the evidence, on 16.05.2017, having waited for the senior counsel for the husband to appear and cross examine the witnesses and as he did not turn up till 04:15 PM on that day. The commissioner in his report submitted to the Court also stated that his attempts to contact the junior counsel, who sought pass over till 04:15 PM on that day were of no avail as the cell phone of the said counsel was switched off. The respondent-husband having filed his affidavit in lieu of examination in chief did not get ready and failed to appear before the trial Court on the ground that he was out of Country. However, the matter was adjourned to 29.06.2017 after imposition of conditions. Later the husband filed these petitions.'

10. In view of the above conduct of the husband, learned counsel for the wife, who is a Doctor, forcefully contended that no opportunity may be granted as the present attempt is also an attempt to drag on the proceedings endlessly.

11. In reply, learned counsel for the husband submitted that one more last opportunity may be given by imposing heavy terms, if necessary, and by fixing a schedule for cross examination of PWs1 to 3 by the counsel for the respondent-husband with necessary other directions.

12. I have given earnest consideration to the facts and submissions. Having regard to the fact that the issue is a matrimonial issue concerning the lives and future of both the parties, this Court is of the considered view that one more

last opportunity can be given to the husband to cross examine PWs1 to 3 by imposing necessary conditions to safeguard the interests of the wife.

13. In the result, both the Civil Revision Petitions are allowed and the orders impugned are set aside. As a sequel, IA.Nos.613 & 614 of 2017 in OP.No.1823 of 2014 are allowed subject to the condition that the husband shall deposit Rs.25,000/- (Rupees Twenty Five Thousands) to the credit of the afore-stated OP, on or before 03.11.2017; failing which the orders impugned in the revisions shall stand revived and the petitions shall stand dismissed. However, on such deposit, the trial Court shall forthwith appoint an advocate commissioner for recording the cross examination of PWs1 to 3 with a direction in the warrant to the Commissioner to complete recording the cross examinations of the said witnesses on 13.11.2017, 14.11.2017 & 15.11.2017 without fail and file his report into Court on 16.11.2017 with the depositions, if any, recorded of the said witnesses. From out of the afore-said amount ordered to be deposited, the trial Court shall pay an amount of Rs.5,000/- towards Commissioner's fee and release the remaining amount to the wife to offset the hardship that may be caused on account of the delay. It is made clear that in the event the husband fails to avail the last opportunity now granted, his right to cross examine the said witness shall remain forfeited once and for all.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

27.10.2017

Note: Issue CC by 31.10.2017.

[B/o]

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