

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.S. RAMESH
C.R.P(P.D)No. 2463 of 2017

S.Suresh ..Petitioner/ Respondent / petitioner

-Vs-

M.Deepa ...Respondent/ petitioner / Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to allow the above Civil Revision Petition and set aside the order passed in I.A.No.107 of 2017 in HMOP.No.174 of 2016 dated 31.05.2017 pending on the file of the learned Family Court, Dharmapuri District.

For Petitioner : Mr.P.G.Perumal Pandian

O R D E R

The present Civil Revision Petition is to set aside the order passed in I.A.No.107 of 2017 dated 31.05.2017, wherein, the counter affidavit filed by the respondent herein on 20.12.2016 and the evidence adduced by R.W.1 and R.W.2, were directed to be eschewed.

2. The learned counsel for the petitioner submitted that the counter filed by the respondent dated 20.12.2016 is a re-production of the counter filed by the petitioner in I.A.No.203 of 2016 and that the respondent was not justified in any manner to have copied the counter affidavit of the petitioner for the purpose of filing the counter in the main H.M.O.P.

3. The learned counsel for the petitioner also submitted that the trial Court was not correct in eschewing the evidence adduced by R.W.1 and R.W.2 in the absence of any valid reasons, particularly, when the petitioner had filed a memo dated 27.02.2017 objecting the filing of subsequent counter.

4. Though notice has been served on the respondent and her name has also been printed in the cause list, none appears on her behalf.

5. As pointed out by the learned counsel for the petitioner, the counter statement filed in H.M.O.P.No.174 of 2016 filed by the respondent is nothing but a re-production of the counter filed by the

petitioner in I.A.No.203 of 2016. I am unable to comprehend as to how such a counter affidavit was adopted or re-produced by the learned counsel for the respondent herein in the main original petition. The reasoning of the respondent before the trial Court is that such a counter affidavit came to be filed by the other side.

6. In view of the admission of the respondent that the counter has been filed by over-sight, the trial Court has also taken a lenient view by permitting the petitioner to file a fresh counter affidavit in place of the earlier counter affidavit dated 20.12.2016 by imposing costs and also eschewing evidence let in by R.W.1 and R.W.2 based on the earlier counter. The trial Court had also observed that no prejudice would be caused to the respondent, if the respondent is permitted to file a fresh counter affidavit.

7. Though this Court does not find any infirmity in the submissions of the learned counsel for the petitioner, by taking into account the statement made by the respondent before the trial Court that such a counter affidavit came to be filed due to inadvertence, I am of the view that the sympathetic and lenient view be extended to the respondent herein to enable her to defend the main original petition.

8. It is also seen that the evidence let in by R.W.1 and R.W.2 is based on the counter statement filed by the respondent, which apparently is based on the counter of the petitioner herein. As such, the evidence based on the original counter affidavit of the petitioner may not be proper and that the trial Court is justified in eschewing the evidence of R.W.1 and R.W.2. In the entire episode, the petitioner herein/husband cannot be found fault at all. However, in order to secure the ends of justice and for the purpose of giving an opportunity to the respondent to defend her case effectively, the present Civil Revision Petition stands rejected.

9. Nevertheless, since the Original Petition is pending from 05.03.2016 onwards, the trial Court shall endeavor to complete the Original Petition within a period

of 60 days from the date of receipt of a copy of this order. The respondent shall comply with the condition of the costs imposed by the trial Court in its earlier order dated 31.05.2017.

10. With the above observations and direction, the Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

srn

To

The Judge,
Family Court,
Dharmapuri District.

2. The section officer,
VR Section,
High court
Madras

+1cc to Mr.P.G.Perumal Pandian , Advocate SR.No. 61658

C.R.P (P.D) No.2463 of 2017

ASK(04/10/2018)

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