

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) No.633 of 2018

K. Moorthy

Petitioner

Versus

S.Srijothi

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the above CRP by setting aside the fair and decreetal order, dated 12.12.2017 passed in I.A. No.76 of 2017 in I.A. No.132 of 2010 in H.M.O.P. No.25 of 2009 on the file of the Sub-Court, Madurantagam.

For Petitioner

:

Mr.K.Govi Ganesan

ORDER

The respondent/wife has filed H.M.O.P. No.25 of 2009 on the file of the Sub Court, Madhuranthagam for dissolution of marriage. Pending the Original Petition, she filed I.A. No.132 of 2010 seeking a direction to the husband/petitioner herein to undergo medical examination. The said application was allowed by the Court below by issuing a direction as prayed for in the application and directed the petitioner/husband to undergo medical examination. Against the said order passed in I.A. No.132 of 2010, the petitioner/husband has filed CRP No.2400 of 2010 before this Court in which, this Court

directed both the parties to appear for medical test for which purpose appointed an Advocate Commissioner. The petitioner was unable to undergo medical test before the competent Doctor as the said facility was not available in the Government Hospital at Chengalpattu. In this connection, the learned Advocate Commissioner filed a memo. On perusal and recording of the same, the Court below has appointed another Advocate Commissioner and directed the petitioner to pay a sum of Rs.3,000/- towards remuneration to the learned Advocate Commissioner. In the meantime, the petitioner and the respondent went for negotiation for settlement of dispute. As the petitioner was unable to pay the remuneration for the Advocate Commissioner, the petition filed in I.A.No.132 of 2010 was closed. Thereafter, the petitioner expressed his readiness and willingness to pay the remuneration of Rs.3,000/- to the learned Advocate Commissioner, for which purpose, he filed a petition in I.A. No.76 of 2017 to reopen I.A.No.132 of 2010 and permit him to pay the remuneration to the Advocate Commissioner as per *the order made in I.A. No.132 of 2016* .

2. The application in I.A. No. 76 of 2017 was opposed by the respondent by filing a counter affidavit contending that the petitioner has not complied with the earlier conditional order passed in the year 2010 and that the present application has been filed belatedly at the time of the examination of evidence on the side of respondent.

3. The Court below, by considering the facts and the submission of the learned counsel for both sides, held that there is no satisfactory reason stated in the affidavit for filing the application to re-open belatedly that too, at the stage of the recording of

evidence of the respondent's side witnesses. Accordingly, the court below dismissed I.A. No.76 of 2017 in I.A. No.132 of 2010 in H.M.O.P. No.25 of 2009. Challenging the same, the present Civil Revision Petition is filed.

4. Admittedly, the petitioner did not pay the remuneration of Rs.3,000/- payable to the learned Advocate Commissioner which resulted in the closure of the earlier application in I.A. No. 132 of 2010. After seven years, the present petition in I.A. No. 76 of 2017 has been filed seeking to re-open I.A. No. 132 of 2010. As rightly pointed out by the court below, the reasons assigned by the petitioner for belatedly filing I.A. No. 76 of 2017 is not satisfactory and convincing besides it was filed at the time when the Original Petition itself was posted for recording the evidence of the witnesses on the side of the respondent. In such circumstances, this Court is not inclined to interfere with the order passed by the Court below. Hence, the order of the court below passed in I.A. No.76 of 2017 in I.A. No. 132 of 2010 in HMOP No.25 of 2009 is confirmed. Accordingly, the Civil Revision Petition stands dismissed. No costs.

21.02.2018

Index : Yes/No

Internet : Yes / No

Speaking/Non Speaking

vsi2

To

The Family Court at Salem

D.KRISHNAKUMAR, J.

vsi2



C.R.P. (PD) No.633 of 2018

WEB COPY

21.02.2018