



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.837 of 2018

and

CMP (MD) No.3691 of 2018

Subbaraya Gounder

.. Petitioner/Petitioner/Defendant

vs

Periyammal

.. Respondent/Respondent/Plaintiff

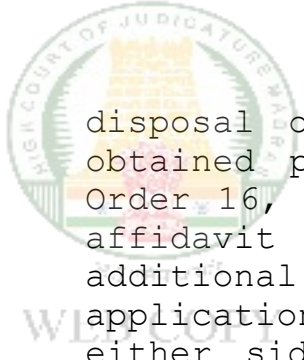
Prayer: Civil Revision is filed under Article 227 of the Constitution of India, to call for the records in Fair and Decreetal order dated 11.01.2018 passed in I.A.No.1353 of 2017 in O.S.No.244 of 2014 on the file of the Additional District Munsif Court, Karur and set aside the same.

For Petitioners : Mr.V.Perumal

ORDER

The Revision Petitioner is the husband of the Respondent herein. The Respondent herein/wife filed a suit for maintenance against her husband, the Petitioner herein in O.S.No.244 of 2014 on the file of the learned District Munsif Court, Karur. Pending suit, the Respondent herein took out an application to examine one Daivanai as DW4. It is alleged by the Petitioner herein that despite receipt of summon from the Court below the said Daivanai failed to appear before the Court below to adduce evidence. Hence the Revision Petitioner filed I.A.No.1353 of 2017 under order 16, rule 10 CPC to issue warrant to the said Daivanai for her non-appearance before the Court below after receipt of summon.

2.The said application was resisted by the Respondent herein by filing counter affidavit wherein it is stated that the above said I.A.No.1353 of 2017 was filed only to delay the



disposal of the suit. Further, the Revision Petitioner has not obtained permission from the trial Court as Contemplated under Order 16, Rule 7(4) of CPC. It is further averred in the counter affidavit of the Respondent herein that the suit is filed for additional maintenance amount to her and therefore the present application is unnecessary. Considering the submission made on either side, the trial court dismissed the said application on 11.01.2018. Challenging the same, the petitioner is before this court.

3.I heard Mr.V.Perumal, learned counsel appearing for the petitioner and perused the entire materials available on record.

4.Admittedly the suit is filed by the Respondent herein for enhancement of maintenance amount to her and so, the examination of one Daivanai who stated to be the house owner of the Respondent herein by the Revision Petitioner as DW4 is in the said suit in no way helpful to the Revision Petitioner in the case of maintenance as held by the Trial Court. Further, the Revision Petitioner has not followed the procedure contemplated under Order 16, Rule 10 CPC. At this juncture, it is useful to extract Order 16, Rule 10 CPC hereunder:

"Order 16- SUMMONING AND ATTENDANCE OF WITNESSES

Rule 10. Procedure where witness fails to comply with summons - [(1) where a person to whom a summon has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court-

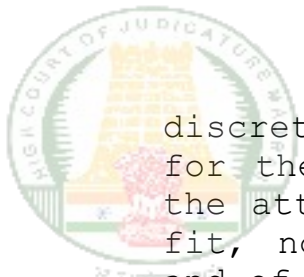
- shall, if the certificate of the serving officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.]

(2) where the Court sees reason to believe that such evidence or production is materials, and the such person has, without lawful excuse, failed to intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

<https://hcservices.ecourts.gov.in/hcservices/>

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its



discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of small causes shall make an order for the attachment of immovable property."

5. In the case on hand, a perusal of the records reveals that the Revision Petitioner has not followed the mandatory procedure prescribed above. The petitioner has to scrupulously follow the mandatory procedure adumbrated under Order 16, Rule 10 of C.P.C. The Trial Court has also rightly held that the Petitioner has not examined the person who served summon upon the above said Daivanai. In the absence of the non-examination of summon serving officer is a fatal to the case of the Revision Petitioner. In my considered opinion also the petitioner has filed the above application only to delay the disposal of the suit.

6. In view of the forgoing discussion, I do not find any irregularity and infirmity in the Impugned order. Hence the Civil Revision Petition is liable to be dismissed, accordingly it is dismissed.

7. However, considering the fact that the suit is of the year 2014 and the trial is also yet to be completed and therefore, this court is inclined to direct the learned District Munsif Court, Karur to dispose of the suit in O.S.No.244 of 2014 within a period of three months from the date of receipt of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif,
Karur.

+ 1 cc TO Mr.V.Perumal , Advocate in SR No. 66772

VSV

AE/JC/SAR4/11.06.2018/3P/3C

order made in
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and
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