WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.04.2018
DELIVERED ON : 13.11.2018

CORAM

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

C.R.P. (MD)(PD) No.8 of 2015
and
M.P.(MD)No.1 of 2015

P.Sayi Geetha ... Petitioner

vs

R.Velayutham ... Respondent

Civil Revision Petitions filed under Article 227 of Constitution of India against the order dated 06.11.2014 in I.A.No.531 of 2014 in H.M.O.P.No.629 of 2010 on the file of the Family Court, Madurai.

For Petitioner : Mr.C.K.M.Appaji
For Respondent : Mr.B.Jameel Arasu

ORDER

This revision is directed against the order of the learned Family Court, Madurai dated 06.11.2014 in I.A.No.531 of 2014 in H.M.O.P.No.629 of 2010, allowing the petition filed by the respondent under Order 18, Rule 17 of CPC.

2. The respondent is the petitioner in I.A.No.531 of 2014 and H.M.O.P.No.629 of 2010. He filed H.M.O.P.No.629 of 2010 under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1995 to dissolve the marriage solemnized between the petitioner and the respondent on 04.6.2003. Resisting the petition, the petitioner herein filed the counter and according to both sides, the O.P. is pending for arguments.

3. The respondent husband filed I.A.No.531 of 2014 under Order 18, Rule 17 of CPC to recall R.W.1 enabling him to mark certain material documents on his side alleging that during examination of witnesses, he had failed to mark the copy of lower court deposition, which was very important document to prove his case and to mark the said document, it was necessary to recall R.W.1.

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

WEB COPY

4. Denying the averments in the petition, the petitioner wife filed counter stating that without any iota of evidence, the respondent had filed the O.P. for divorce. The averments set out in paragraph 3 of the affidavit are totally false and there was no basis. There was no provision in marking the deposition recorded in the criminal proceedings in the civil proceedings and in order to harass the respondent, the petitioner had filed the petition. It is stated that despite the order of the learned Judicial Magistrate No.II, Madurai, the petitioner had not paid the maintenance amount and there was no need to recall the respondent.

5. Upon consideration of the rival submissions, the trial Court has allowed the petition. Aggrieved by the same, the petitioner had filed the present revision.

6. Assailing the order of the trial Court, the learned counsel for the petitioner submitted that in the petition, the respondent had failed to specify particulars of document which he failed to mark, its relevancy, name of the lower Court and the nature of the proceedings so as to recall the evidence of R.W.1 as a matter of right. The learned counsel further submitted that the failure of the respondent to mark the document on his behalf is not a ground to recall the evidence of R.W.1. He would submit that the trial Court failed to give reasoning for allowing the petition and hence, prayed for setting aside the order of the trial Court.

7. Per contra, the learned counsel for the respondent submitted that since the respondent omitted to mark the deposition copy of the lower Court, which was very important, he had filed the petition to mark the said deposition by recalling R.W.1. He would submit that having satisfied with the reasons only, the trial Court allowed the petition and there was no need to interfere with the order of the trial Court.

8. I heard Mr.C.K.M.Appaji, learned counsel for the petitioner and Mr.B.Jameel Arasu, learned counsel for the respondent and also perused the materials available on record.

9. Admittedly, the respondent has not described particulars of document in the petition and also no reason was assigned to recall R.W.1 in marking the alleged document. The trial Court only stated that in order to give fair opportunity for both parties, it had allowed the petition. As rightly argued by the learned counsel for the petitioner failure of the respondent to mark the alleged deposition on his behalf is not a ground to recall the evidence of R.W.1.

10. On a perusal of the impugned order, the trial Court has not passed a detailed order. The order of the trial Court reads thus:

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

"The petitioner being the husband filed this application under Order 18, Rule 17 CPC to recall the R.W.1 in

WEB COPY

H.M.O.P.No.629 of 2010 and for marking the document on the petitioner's side.
Counter filed. Head both sides. To give fair opportunity for both parties, in the interest of justice, this petition allowed."

11. In the absence of the description of document in the petition and also purposely omitted to describe the same in the petition, I am of the view that there is no bona fide in the petition filed by the respondent.

12. It is to be noted that the trial has commenced and both sides evidence was closed and the O.P. was now pending for arguments and at the fag end of the case, the respondent had filed the petition to recall the evidence of R.W.1.

13. It is well settled that the power to recall any witness under Order 18, Rule 17 of CPC, can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.

14. Undisputedly, the evidence of both sides was over and the O.P. was pending for arguments. After making attempts to protract the proceedings, the respondent eventually filed the petition, which cannot be entertained and the trial Court erred in allowing the petition. There was no reason as to why the respondent wants to mark the alleged copy of deposition through R.W.1.

15. Since the respondent had failed to specify particulars of document and its relevancy in his affidavit and also failed to give reason warranting for recalling the evidence of R.W.1, I am of the view that the trial Court erred in allowing the petition. Therefore, the impugned order is liable to be set aside.

16. In the result, the Civil Revision Petition is allowed and the impugned order of the trial Court dated 06.11.2014 made in I.A.No.531 of 2014 in H.M.O.P.No.629 of 2010 is set aside. No costs. Consequently, connected miscellaneous petition is closed. Since the H.M.O.P.No.629 of 2010 is of the year 2010 and evidence was already over, the trial Court is directed to dispose of the main O.P., uninfluenced by the order of this Court, within a period of one month from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (AD-I)

/True Copy/

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

Sub Assistant Registrar (CS-IV)

WEB COPY

To

The Judge, Family Court,
Madurai.

+ 1 CC TO Mr.C.K.M.APPAJI, ADVOCATE IN SR No. 95014
+ 1 CC TO Mr.B.JAMEEL ARASU, ADVOCATE IN SR No. 95346

VSV
TE/SV/SAR-4 : 05/12/2018 : 4P/4C

order made in
C.R.P. (MD)(PD) No.8 of 2015 and
M.P.(MD)No.1 of 2015
13.11.2018

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