

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.851 OF 2018

O R D E R

FCOP No.378 of 2017 on the file of the Family Court, Ranga Reddy District at L.B.Nagar (old O.P.No.1279 of 2011 on the file of the Family Court, City Civil Courts, Hyderabad) was filed by the petitioner-husband seeking a declaration that his marriage with the respondent-wife was a nullity under Section 12(1)(c) of the Hindu Marriage Act, 1955 (*for brevity*, 'the Act of 1955') and to dissolve the said marriage under Section 13(1)(ia) thereof.

The petitioner-husband filed I.A.No.855 of 2017 in the said O.P. under Section 151 CPC seeking recall of P.W.1, i.e., himself, and to receive additional documents in evidence. By order dated 05.01.2018, the Family Court dismissed the said I.A. Aggrieved thereby, he is before this Court by way of this civil revision petition under Article 227 of the Constitution.

Pursuant to the permission granted by this Court to effect personal service of notice as to the filing of this C.R.P., Sri K.Sai Babu, learned counsel for the petitioner-husband, took out notice to the respondent-wife by Registered Post with Acknowledgment Due. However, the envelope was returned with the postal endorsement 'not claimed'. The same would amount to deemed service but there is no representation for the respondent-wife.

Heard Sri K.Sai Babu, learned counsel.

The case of the petitioner-husband in the O.P. was as under:
His marriage with the respondent-wife was solemnised on 26.05.2010 at Shalibanda, Hyderabad, as per Hindu rites and customs. He was led to believe that the date of birth of the

respondent-wife was 08.08.1981. However, he came to know later that she was 11 years older than he was. Since their marriage, she insisted that they should live separately, away from his parents' house. She committed various acts of cruelty towards him.

Alleging that she had played fraud upon him and his family by misrepresenting her age and was also cruel towards him, he sought dissolution of their marriage. While so, the respondent-wife filed O.P.No.1063 of 2012 seeking restitution of conjugal rights.

The petitioner-husband examined himself as P.W.1. Out of the eleven documents relied upon by him, seven were marked in evidence as Exs.P1 to P7. His examination-in-chief was concluded in August, 2016 and his cross-examination was completed in May, 2017. The respondent-wife (R.W.1) filed her affidavit in lieu of chief-examination in June, 2017. Her cross-examination began on 30.08.2017 and concluded on 13.09.2017.

While so, the petitioner-husband filed the subject I.A.No.855 of 2017 in November, 2017, under Section 151 CPC, seeking to be recalled in the capacity of P.W.1 and to reopen his evidence for receiving 31 additional documents. As per the affidavit filed in support of this petition, his claim was that the respondent-wife had made various statements in her cross-examination, which led him to apply for additional documentary evidence to buttress his case and disprove her statements. He therefore wanted reopening of his evidence to mark these additional documents.

The respondent-wife opposed this plea. In her counter thereto, she asserted that long after closure of his evidence, new documents could not be permitted to be filed by the petitioner-husband to fill up the gaps therein. She alleged that the petitioner-

husband was himself responsible for the laches and negligence in not filing these documents earlier, as they pertained to the period when he gave evidence as P.W.1. She also contested the necessity and relevance of these additional documents.

Perusal of the order under revision reflects that the Family Court took note of the dates on which the parties had completed their depositions and that the case was posted for further evidence of the respondent-wife. The Family Court also noted that by common order dated 01.12.2016 passed in Tr.CMP Nos.734 and 740 of 2016, this Court had directed clubbing of FCOP No.1279 of 2011 (re-numbered as FCOP No.378 of 2017) and FCOP No.1063 of 2012, filed by the respondent-wife, and the transfer of the same to the Family Court at Ranga Reddy District, as the respondent-wife was staying at Dilsukhnagar, Hyderabad. The said order also required the Family Court to endeavour to dispose of the O.Ps. as expeditiously as possible and, preferably, within three months from the date of receipt of the records.

However, despite the time frame indicated by this Court, the order under revision demonstrates that the parties did not come forward to complete their evidence and the subject I.A. was then filed for recall of P.W.1 to permit him to file more documents. The order also recorded that the said documents were not even filed along with the petition. The Family Court further observed that the matter pertained to the year 2011 and the petitioner-husband, having closed his evidence, now wanted to bring in more documents so as to fill up gaps, which is impermissible, particularly, after the evidence of the respondent-wife was already adduced. Further, the Family Court observed that the documents

which were sought to be marked were already divulged in the evidence of both parties and therefore, the petitioner-husband could not be recalled at this belated stage. The Family Court therefore concluded that no reason was made out to recall the petitioner-husband (P.W.1) and accordingly dismissed the I.A.

Sri K.Sai Babu, learned counsel, would submit that out of the 31 documents mentioned in the subject I.A., six documents are of particular importance and that the Family Court ought to have permitted at least the same to be marked. These documents are: the counter filed by respondent-wife in W.P.No.2639 of 2017 before this Court (shown at Item No.8 of the petition in the I.A.), the School Register of the Government Girls High School, Sultan Bazaar, Hyderabad, having the respondent-wife's and her sister's dates of birth (shown at Item No.10), the passport application of the respondent-wife filed before the Regional Passport Officer, Secunderabad (shown at Item No.11), the RTI response by the Road Transport Authority, Moosarambagh, Hyderabad (shown at Item No.14), statement of D.Mohan Rao, witness in Crime No.527 of 2014 on the file of the Chaitanyapuri Police Station (shown at Item No.15), and the implead petition in WPMP No.11935 of 2017 filed by the respondent-wife's mother in WP No.2639 of 2017 before this Court (shown at Item No.21).

Be it noted that most of these documents were sought to be marked in connection with the date of birth/age of the respondent-wife. Except for the counter filed in WP No.2639 of 2017 and the implead petition in WPMP No.11935 of 2017 in the said writ petition, which are documents of March, 2017, the other documents are of earlier vintage and were very much in existence

during the period that the petitioner-husband gave evidence. No explanation is forthcoming from the petitioner-husband, be it before the Family Court or even before this Court, as to why the documents, which were within his knowledge or which could have been obtained with ordinary diligence, were not filed earlier. It is therefore manifest that it was only after the cross-examination of the respondent-wife that the petitioner-husband took steps for procuring these documents, taking a cue from her deposition. This lack of diligence on his part in prosecuting his case cannot be countenanced. It may be noted that the very basis for the petitioner-husband to seek dissolution of the marriage was the fraud allegedly played upon him by the respondent-wife in connection with her age/date of birth. When that was the substratum of his divorce O.P., it was incumbent upon the petitioner-husband to gather all the necessary documentary evidence at the outset. He cannot be permitted to now fill up the gaps, having taken steps only after conclusion of the cross-examination of the respondent-wife.

Though Sri K.Sai Babu, learned counsel, would press into service case law, this Court is of the opinion that each case would have to turn upon its own individual facts and, given the circumstances obtaining in the case on hand, precedential law cannot come to the avail of the petitioner-husband.

In **K.K.VELUSAMY V/s. N.PALANISAMY**¹, the Supreme Court observed that the amended provisions of the CPC contemplate that a trial Court would hear arguments immediately after completion of the evidence and then proceed to judgment and

¹ (2011) 11 SCC 275

it was therefore unnecessary to have an express provision for reopening the evidence to examine a fresh witness or to recall any witness for further examination. But, if there is a time gap between the completion of evidence and hearing of arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the Court may, in exercise of its inherent power under Section 151 CPC, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the Court may deem fit to impose.

The aforestated observations, however, do not benefit the petitioner-husband. The decision did not relate to condoning the carelessness or negligence of a party while adducing evidence. Further, the case is not at the interregnum stage, as envisaged by the Supreme Court in the aforestated decision, as the respondent-wife's evidence is yet to be closed and in the meanwhile, the petitioner-husband seeks to fill up the lacunae which were thrown up during the cross-examination of the respondent-wife.

In **Dr. (Mrs.) MALATHI RAVI, M.D. V/s. Dr. B.V.RAVI, M.D.**², the Supreme Court observed that subsequent events can be taken note of as it is the bounden duty of the Court to do so and not to leave the parties to fight the battle afresh after years of litigation. This decision is also of no avail as the petitioner-husband is not relying on subsequent events but upon documents, most of which were available even earlier, to support his case that

² (2014) 7 SCC 640

the respondent-wife was older than him. As this was the very basis of his divorce O.P., it can hardly be said to be a subsequent event.

In **VIJAY KUMAR RAMCHANDRA BHATE V/s. NEELA VIJAY KUMAR BHATE**³, the Supreme Court was considering whether averments/accusations in the pleadings or deposition would constitute mental cruelty for sustaining a claim for divorce under Section 13(1)(ia) of the Act of 1955. It was held that allegations in the written statement or suggested in the course of examination and cross-examination would satisfy the requirement of law as to cruelty. This Court is at a loss to understand as to how this judgment advances the case of the petitioner-husband.

In **KATHI NARSINGA RAO V/s. KODI SUPRIYA**⁴, a learned Judge of this Court opined that when the documents sought to be adduced into evidence by recall of a witness were shown to be of relevance and the Court felt that this documentary evidence was necessary, it would be within the scope of the Court to take recourse to Order 18 Rule 17 CPC and permit recall of the witness. As already stated *supra*, each case would have to turn upon its own individual facts and the case on hand does not qualify for exercise of such discretion.

Lastly, in **S.J.K.STEEL CORPORATION LTD. V/s. T.SATHYA NARAYANA**⁵, a learned Judge of this Court affirmed that Courts can take into consideration subsequent events to mould the relief and the plaintiff in a suit can seek amendment of the suit relief basing on such subsequent events. Again, this judgment is of no relevance to the present controversy.

³ (2003) 6 SCC 334

⁴ 2016 SCC Online HYDERABAD 346

⁵ 2007 (2) ALD 472

Thus, as matters stand, this Court finds that the endeavour of the petitioner-husband is merely to fill in the gaps by introducing documentary evidence, most of which was available to him even earlier. Be it noted that at the stage of his examination-in-chief, he only wanted to mark in evidence eleven documents, of which seven were permitted to be marked. But, by way of the subject I.A., he now seeks to mark in evidence 31 additional documents, most of which date back to prior to his deposition as P.W.1. Four out of the six documents that he now wishes to restrict himself to, as already stated *supra*, belong to the same category, as only two pertain to March, 2017. These two affidavits filed by the respondent-wife and her mother cannot be stated to be subsequent events that can be relied upon by the petitioner-husband to prove his case. The documents were not even produced before the Family Court and therefore, there was no possibility of their relevance being examined. Further, as this Court already indicated the time frame within which it desired the Family Court to dispose of the cases, this Court finds no error having been committed by the Family Court in taking this aspect into account also. Viewed from any angle, this Court finds no grounds to interfere with the order under revision.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

MARCH, 2018
PGS