

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3915 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 20.06.2018 passed in I.A.No.888 of 2018 in O.P.No.1027 of 2013 on the file of the Principal Judge, Family Court, City Civil Court at Hyderabad.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the present revision are briefly as follows: The respondent filed O.P.No.1027 of 2013, under Section 9 of the Hindu Marriage Act, on the file of the Principal Judge, Family Court, City Civil Court at Hyderabad, against the petitioner. The petitioner filed O.P.No.772 of 2013, under Section 125 Cr.P.C., on the file of the Principal Judge, Family Court, City Civil Court at Hyderabad, against the respondent claiming maintenance. During the course of trial, both parties filed joint memo to club both matters and record evidence in O.P.No.1027 of 2013 and the same was allowed on 19.09.2015. On 29.04.2016, O.P.No.1027 of 2013 was closed and thereafter reopened. O.P.No.772 of 2013 was allowed on 28.11.2017. After closure of the evidence on both sides, the respondent filed I.A.No.888 of 2018 to recall RW.1. The trial Court allowed the said petition after affording a reasonable opportunity to both parties. Hence, the revision.

4. Learned counsel for the petitioner strenuously submitted that the trial Court, without taking into consideration the averments made in the affidavit filed by the respondent, allowed

the petition on erroneous grounds. He further submitted that the order passed by the trial Court is not sustainable either on facts or in law.

5. *Per contra*, learned counsel for the respondent submitted that no prejudice will be caused to the petitioner even if the petition is allowed. He further submitted that the trial Court considered all these aspects and allowed the petition.

6. The point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the order of the trial Court?

7. The petitioner is the wife of respondent. For one reason or the other, they were forced to approach the Family Court to resolve the dispute. The respondent filed O.P.No.1027 of 2013, under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights. The petitioner deposed evidence in O.P.No.772 of 2013. It is the contention of the learned counsel for the respondent that the petitioner made certain admissions in O.P.No.772 of 2013. In order to elicit the admissions made by the petitioner in O.P.No.772 of 2013, it is just and necessary to recall RW.1. It is also stated in the affidavit that the respondent failed to elicit relevant aspects in the cross-examination of RW.1.

8. At the time of arguments, learned counsel for both parties submitted that the respondent filed Family Court Appeal challenging the order dated 28.11.2017 in O.P.No.772 of 2013.

9. The very purpose of the cross-examination of the witness is to elicit the truth. If the petition is dismissed, it may not be

possible for the respondent to ventilate his legitimate and legal grievances. Even if the petition is allowed, the same may not cause any prejudice or affect the rights of the petitioner. The trial Court considered the scope of Order XVIII Rule 17 C.P.C. in the light of the facts of the case on hand. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial Court.

10. In the result, the Civil Revision Petition is dismissed. Consequently, I.A.No.888 of 2018 is allowed recalling RW.1. However, the respondent is hereby directed to cross-examine RW.1 on the day fixed by the trial Court without seeking any adjournment. If the respondent fails to cross-examine RW.1 on the day fixed, the trial Court is at liberty to proceed in accordance with law. There shall be no order as to costs.

11. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 12.07.2018

Note: Issue CC by Monday

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