

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.5538 OF 2017

ORDER:

1 This petition is filed under Article 227 of the Constitution of India assailing the order dated 22.09.2017 passed in I.A.No.553 of 2017 in H.M.O.P.No.6 of 2015 on the file of the Court of the Senior Civil Judge, Purchur.

2 Heard the learned counsel for both parties.

3 A perusal of the record reveals that the respondent herein filed HMOP No.6 of 2015 on the file of the Court of the Senior Civil Judge, Purchur against the petitioner under Section 13 (ia) of the Hindu Marriage Act 1955 for dissolution of the marriage between him and the petitioner. After completion of evidence on the respondent's side, the matter was posted for petitioner's side evidence. The petitioner examined herself as R.W.1 and filed chief examination affidavit of R.W.2, who is none other than her mother. The trial court granted time nearly for a period of one year for appearance of R.W.2. Ultimately, the trial court posted the matter to 07.08.2017 directing R.W.2 to appear before the Court for the purpose of cross examination. In spite of the conditional order, R.W.2 did not appear before the trial court. Hence the trial court closed the evidence on petitioner's side. Thereafter the petitioner filed I.A.No.552 of 2017 to recall R.W.2 for the purpose of cross examination. The trial court dismissed the said petition by the impugned order. Hence the present Civil Revision Petition.

4 If the petition is not allowed, it may not be possible for the petitioner to substantiate the stand taken by her. On the other hand, if the petition is allowed unconditionally, the petitioner may feel that

she can drag on the proceedings as long as possible on one pretext or the other. While passing orders in this type of petitions, the Court has to strike a balance between the parties.

5 Taking into consideration the facts and circumstances of the case, the Civil Revision Petition is allowed, setting aside the order dated 22.09.2017 passed in I.A.No.553 of 2017 in H.M.O.P.No.6 of 2015 on the file of the Court of the Senior Civil Judge, Purchur. Consequently, I.A.No.553 of 2017 is allowed recalling R.W.2 for the purpose of cross examination on condition of the petitioner paying an amount of Rs.3,000/- to the respondent. If R.W.2 fails to attend the court on the day fixed, the trial court is at liberty to proceed in accordance with law. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

Date: July 27, 2018
Kvsn

T.SUNIL CHOWDARY, J

