

C.M.P.No.26266 of 2019
in
C.M.S.A.SR.No.107052 of 2019

Reserved on	Pronounced on
09.12.2019	20.12.2019

S.VAIDYANATHAN,J.

The Petitioner / Party-in-Person has come forward with the present petition, seeking to accept the cause title for adding the 1 Additional District Judge, Tiruvallur, namely, Smt.Deepthi Arivunidhi as Respondent No.2 in the Civil Miscellaneous Second Appeal, which is in SR stage.

2. For the sake of brevity, the parties would be referred to as per their nomenclature in the present petition as “Petitioner” and “Respondent No.1 / Wife, namely, P.G.Egavalli”.

Brief Facts leading to filing of the petition are as follows:

3. According to the Petitioner, he married the Respondent No.1 on 15.07.1991 and due to difference of opinion between them, they got separated in the year 2002 and since then, the Respondent No.1 has been living with her father. On account of her long separation, the Petitioner had filed HMOP No.31 of 2014 for restitution of conjugal rights, whereas the Respondent No.1 had

filed HMOP No.32 of 2014 for divorce on the ground that the Petitioner is impotent and is not fit to lead matrimonial life. The Subordinate Judge, Tiruvallur, upon considering the facts and circumstances of the entire case, had passed a common order dated 22.01.2018, in favour of the Respondent No.1, thereby dissolving the marriage solemnized between the Petitioner and the Respondent No.1;

3.1. Aggrieved by the common order dated 22.01.2018, the Petitioner had filed a Civil Miscellaneous Appeal No.14 of 2018 before the I Additional District Judge, Tiruvallur (who is sought to be added as Respondent No.2 in the CMSA in the individual capacity) and the I Additional District Judge, Tiruvallur, after appraising the whole scenario, came to the conclusion on 27.06.2019 that the Respondent No.1 / Wife had duly established the *animus deserendi* in the present case and therefore, upheld the common order dated 22.01.2018 passed by the Subordinate Judge, Tiruvallur;

3.2. After dismissal of the said Civil Miscellaneous Appeal No.14 of 2018, the Petitioner has now approached this Court, questioning the order of the I Additional District Judge, Tiruvallur dated 27.06.2019. Since the Petitioner has intended to add the I Additional District Judge, Tiruvallur, who had dismissed

the Appeal, in her personal capacity in the cause title, he has filed the present petition, by invoking the provisions of Section 151 of CPC.

4. The Petitioner, who was permitted to advance his argument as Party-in-Person by the Committee constituted as per Rule 8 of High Court of Madras (Conduct of Proceedings by Party-in-Person) Rules, 2019, has submitted that the I Additional District Judge, Tiruvallur has deliberately violated the norms and provisions in the administration of justice and therefore, the judgment rendered by her does not fall under the category of 'error in the judgment'. He has further submitted that the learned Judge, by way of her judgment, has closed all the doors of reunion with his wife, thereby spoiled his reputation and dignity in the society and he was also forced to face mental torture and agony by filing yet another appeal before this Court. He has also submitted that he is entitled to get compensation from her for the crisis forced to be meted by her and the Petitioner has listed out various reasons to substantiate his argument as to why the I Additional District Judge, Tiruvallur is to be added as a party to the appeal.

4.1. The Petitioner, in support of his submission, has relied upon a judgment of the Hon'ble Supreme Court in the case of **M/s.Atma Ram Builders**.

P.Ltd vs. A.K.Tuli and Others [Contempt Petition © Nos.140-144/2011 in

SLP(C) Nos.27755 - 27759 of 2010] reported in **MANU/SC/0604/2011,**

wherein it has been held as under:

“11. We are constrained to say that a certain section of the subordinate judiciary in this country is bringing the whole judiciary of India into disrepute by passing orders on extraneous considerations. We do not wish to comment on the various allegations which are often made to us about what certain members of the subordinate judiciary are doing, but we do want to say that these kind of malpractices have to be totally weeded out. Such subordinate judiciary Judges are bringing a bad name to the whole institution and must be thrown out of the judiciary.”

Hence, it was strenuously argued that the interest of justice would not be met without adding the I Additional District Judge, Tiruvallur as party to the case.

5. The core issue to be decided in this case is whether the request of the Petitioner to add the I Additional District Judge, Tiruvallur, who has passed the order under appeal in the discharge of her official duty, is justified or not?

6. A careful reading of the judgment dated 27.06.2019 passed by the I Additional District Judge, Tiruvallur discloses the fact that the learned Judge has passed the order and discharged her duty in the capacity of a District

Judge and rendered a finding based on the facts set out in the petition before her. The Hon'ble Supreme Court in the case of Savitri Devi vs. District Judge, Gorakhpur and Others, reported in (1999) 2 SCC 577, had strongly condemned the practice of impleading judicial officers as party to the civil proceedings. For the purpose convenience, the relevant portion of the said judgment is extracted hereunder:

“14. Before parting with this case it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the Special Leave Petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division) Gorakhpur are shown as respondents and in the Special Leave Petition they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the Special Leave Petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the concerned judicial officers. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or Special Leave Petitions under Article

136 of the Constitution of India was stopped. We are strongly deprecating such a practice.

7. The judgment relied upon by the Petitioner is not applicable to the facts of the present case, because, the Hon'ble Supreme Court had passed such an order in a contempt petition, where the order of the Court had not been complied with by the District Judge therein and in that given circumstances, the District Judge was ordered to be made as a party to the contempt and that is not the case herein.

8. Admittedly, the order passed by the I Additional District Judge, Tiruvallur was not in favour of the petitioner and he cannot expect that findings should always be rendered in his favour and if the request of the petitioner is acceded to, there will be a lacuna in the administration of justice and by taking this case as a precedent, other parties to the lis, who did not succeed in the case start knocking at the doors of this Court with the similar prayer. In other words, in case the finding rendered by the I Additional District Judge, Tiruvallur would be in his favour and the wife comes with the similar petition, will it be justified? and in that process, there will be no end to the proceedings and the Judicial Officers will certainly be scared to discharge their official duty and always feel that Damocles sword is hanging on their head.

9. A judge cannot be dictated to act in a particular manner other than

those that have been enumerated in the jurisprudence and a judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt judges, but to protect the public from the dangers to which the administration of justice would be exposed, if the concerned judicial officers were subjected to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary, as a judge should be free to make independent decisions.

10. Moreover, the Judicial Officers are protected by the Judicial Officers' Protection Act, 1850 (hereinafter called the "Act 1850") and they are not liable to be sued for discharging their judicial duty. The relevant provision of the Act, 1850 reads as follows:

1. Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith,

believed himself to have jurisdiction to do or order the act complained of ; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.”

11. In addition to the above, there is one more act, called The Judges (Protection) Act, 1985, to secure additional protection for Judges and others acting judicially and relevant section of the Act is extracted hereunder:

“3. Additional protection to Judges.—(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.”

12. It is pertinent to state here that if a decision rendered by the Lower Forum is found to be wrong, in the appeal, the Appellate Court can rectify the same and rewrite the judgment. Likewise, if a decision is rendered based on any extraneous consideration, then the Higher Forum will *suo motu* take action

against the Subordinate Judicial Officers. But, the averments made in the present case on hand are not germane and it is not known as to why Registry had not listed the matter for maintainability before numbering the present Civil Miscellaneous Petition.

13. Considering the totality of the circumstances, I find that there is no ground made out to accept the case of the Petitioner so as to amend the cause title by adding the name of the I Additional District Judge, Tiruvallur therein. Accordingly, the present Civil Miscellaneous Petition is dismissed. It is open to the Registry to scrutinize the papers and number the Civil Miscellaneous Second Appeal, provided the same is in order. **It is further directed that before numbering the CMSA, Registry must ensure that the name of the I Additional District Judge, Tiruvallur does not find place anywhere in the petition, typeset, etc., including the cause title and if it is found, the same needs to be struck off / deleted by the Registry, by duly endorsing the order passed in this petition today.**

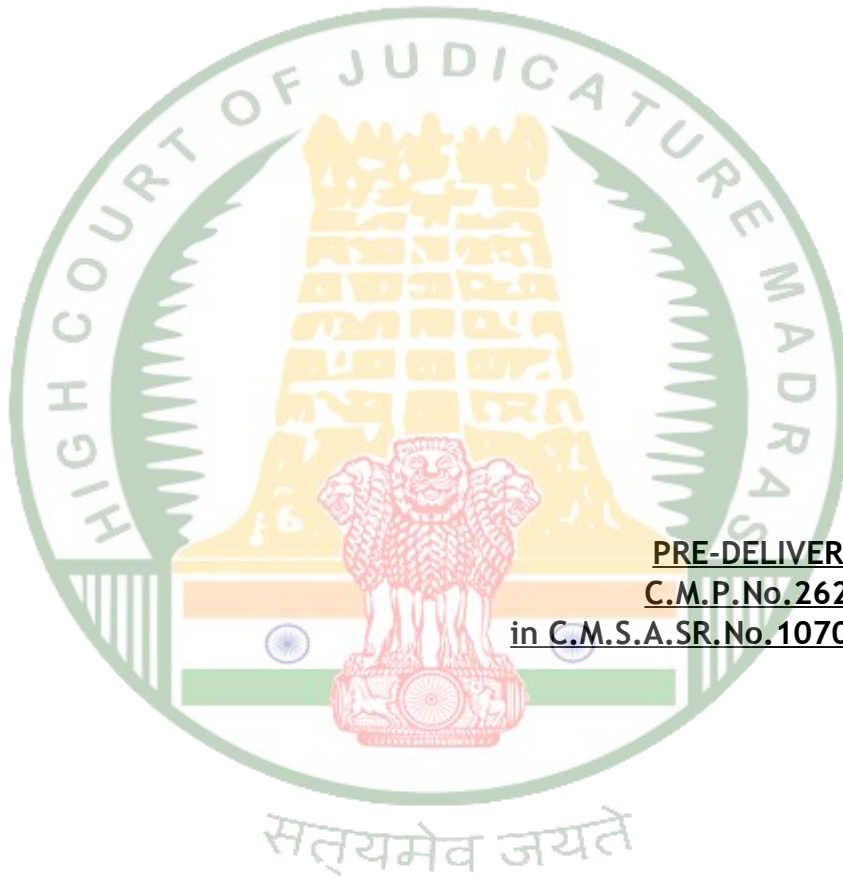
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PRE-DELIVERY ORDER IN
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