

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.3097 of 2018
&
C.M.P.No.17894 of 2018

M.Nithya

...Petitioner

Vs

K.Kirubanandan

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal orders dated 20.09.2018 passed in I.A.No.4641 of 2018 in O.P.No.366 of 2016 on the file of the Principal Family Court, Chennai.

For Petitioner

:

Mr.R.Rajarajan

ORDER

The wife is the revision petitioner before this Court. The Civil Revision Petition is filed challenging the order passed by the Principal Family Court, Chennai in I.A.No.4641 of 2018 in O.P.No.366 of 2016 in and by which the learned Judge had allowed the application moved by

the husband to recall himself as P.W.1 and to mark documents that had been received by the Court on 29.05.2018. The facts in brief necessary for disposing of the the above Civil Revision Petition are as follows:

2.The Husband had filed a petition seeking a divorce from the revision petitioner/wife before the Sub Court, Kallakurichi in H.M.O.P.No.72 of 2014 on the ground of cruelty. The wife after filing a counter to the main H.M.O.P. had filed an application seeking to transfer the H.M.O.P pending on the file of the Sub Court, Kallakurichi to be tried before the Family Court, Chennai in Tr.C.M.P.No.554 of 2015 before this Court. By order dated 05.10.2015 the transfer C.M.P was allowed and H.M.O.P.No.72 of 2014 pending on the file of the Sub Court, Kallakurichi was transferred to the file of the Principal Family Judge, Chennai and renumbered as H.M.O.P.No.366 of 2016. It is seen that, when the matter was pending before the Sub Court, Kallakurichi, the husband had filed a proof affidavit on 14.07.2015, thereafter, the orders of transfer had materialised.

3.After the H.M.O.P. was transferred to the file of the Principal

Family Court, Chennai the husband took out an application in I.A.No.2934 of 2018 for amending the petition with reference to the date of marriage and with reference to inserting certain information that had transpired subsequent to the filing of the H.M.O.P. It is also seen that on the very same day an application has been filed (though the number is not known to both the Counsels) for receiving additional documents numbering about twenty two.

4.The amendment petition upon protest by the wife was dismissed by the learned Family Judge, Chennai, on the ground that it cannot be allowed on the ground that the bar had been imposed by the provision amended in Order VI Rule 17 of the Code of Civil Procedure as the amendment petition has been filed after the evidence had started. This order was taken on revision by respondent/husband in C.R.P.No.2045 of 2018 and this Court confirmed the order and observed that it took four years for the husband to amend the application with reference to subsequent events.

5.Infact even before the order was passed by this Court in C.R.P.No.2045 of 2018 on 16.07.2018 the husband had filed

I.A.No.4641 of 2018 to recall his evidence in order to mark those documents which had been received by the Court on 29.05.2018. This was vehemently opposed by the revision petitioner/wife despite which the Principal Family Judge had allowed the application taking into consideration the fact that these documents had been received by the Court on 29.05.2018 and the husband should be granted an opportunity to mark the documents and an opportunity to the wife to cross examine the revision petitioner. Challenging the said order the wife is before this Court.

6.Heard Mr.P.Mani, learned counsel appearing on behalf of the wife. The arguments that have been put forward is that the respondent/husband is attempting to fill up the lacuna and that the documents were already been available with him when he was cross examined and the petition was an attempt to get over the order passed in I.A.No.2934 of 2018 which was confirmed by this Court in C.R.P.No.2045 of 2018. He would rely upon the Judgement of the Honourable supreme Court in ***Vadiraj Naggappa Vernekar (Dead) Vs. Sharadchandra Prabhakar Gogate*** reported in **(2009) 4 SCC 410.**

7.Mr.T.Gandhi, learned counsel appearing on behalf of the respondent would contend that the documents were required to be marked only to substantiate the claim of the husband that the wife had treated him cruelly and that by making these documents no news care was being put forward. Further a technical omission should not be mulcted upon the respondent.

8.Heard the arguments on either sides and perused the records. It is seen that the original petition has been filed on the ground of cruelty. The amendment petition I.A.No.2934 of 2018 was dismissed only on the ground that it was a post trial amendment and the same was not dismissed on merits. Further it is also seen that the Court had allowed the application filed by the husband to receive the documents as early as on 29.05.2015, the cross examination had commenced only on 13.07.2018 and the proof affidavit in chief had been filed on 14.07.2015 when the matter was still pending in the Sub Court, Kallakurichi. It is to be borne in mind that in the family Court it is the parties who conduct the proceedings and Advocates are only assisting them. Parties cannot be presumed to know the nuances of the Court

procedures. The main H.M.O.P. Has been filed on the grounds of cruelty and these documents are being put forward by the husband to show that pending the proceedings the harassment by the wife had continued. The learned counsel had relied upon the Judgment of the Honourable Supreme Court in **Vadiraj Naggappa Vernekar (Dead) Vs. Sharadchandra Prabhakar Gogate** reported in **(2009) 4 SCC 410** wherein the Honourable Supreme Court has held as follows:

"29.It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion hereinabove, 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.

30.Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the trial Court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter."

Therefore it has been made clear that if the re-examination of a witness ultimately has a bearing on the decision, the Court should exercise its power to recall evidence. Considering the above factors and also considering the fact that the learned Principal Family Judge has given liberty to the revision petitioner to cross examine the husband after the marking of the documents no prejudice is going to caused to the revision petitioner. I find no infirmity in the order passed by the learned Principal Family Judge, Chennai. The Civil Revision Petition is therefore dismissed. Consequently, connected Civil Miscellaneous Petition is also closed.

18.02.2019

kan
Index : Yes/No
Speaking order/non-speaking order

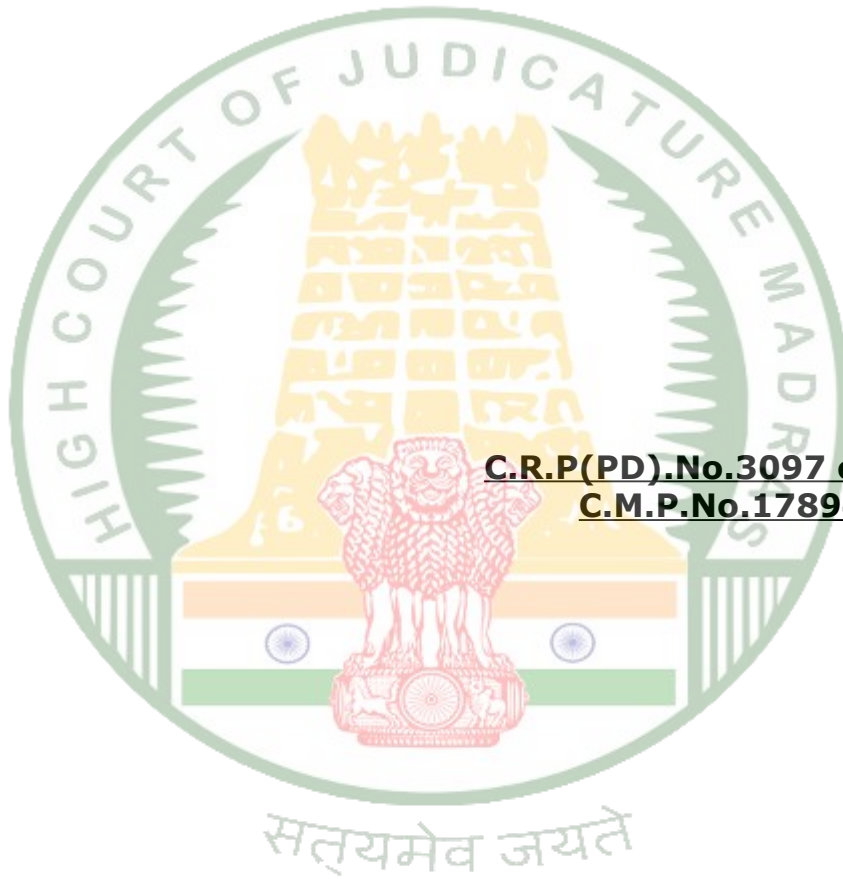
To

The Principal Family Judge,
Chennai

WEB COPY

P.T.ASHA, J.,

kan



**C.R.P(PD).No.3097 of 2018 &
C.M.P.No.17894 of 2018**

WEB COPY

18.02.2019