



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2019

CORAM:

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

C.R.P (MD) No.2539 of 2018 (PD)

and

CMP (MD) .Nos.11174 of 2018 and 4131 of 2019

K.Varatharajan

.. Petitioner/Petitioner

Vs.

M.Narmadha

.. Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order, dated 22.10.2018, passed in I.A.No.79 of 2017 in H.M.O.P.No.2 of 2017 by the Subordinate Court, Aruppukottai, Virudhunagar District.

For petitioner	: Mr.J.Senthil Kumar
For respondent	: Ms.D.Farjana Ghoushin, for Mr.G.Mariappan

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the order dated 22.10.2018 passed in I.A.No.79 of 2017 in H.M.O.P.No.2 of 2017, whereby and whereunder the Court below has dismissed the petition filed by the petitioner seeking to permit him to represent and act on behalf of his son Senthilraj / respondent in H.M.O.P.No.2 of 2017.

2. The respondent herein filed H.M.O.P.No.2 of 2017 for divorce against her husband Senthilraj before the Court below. The petitioner herein, who is the father of Senthilraj, has presented an application seeking to permit him to represent and act on behalf of the respondent in H.M.O.P.No.2 of 2017 as he has been working in Australia and he is not in a position to appear before the Court regularly. Questioning the maintainability of the said petition, the Court below has returned the same. Aggrieved by the same, the petitioner has filed C.R.P.(MD).No.1404 of 2017 before this Court. This Court, by order dated 31.07.2017, disposed of the revision petition with a direction to the petitioner to represent the application before the Court below giving reasons as to how the application is maintainable and on such representation, the Court below was directed to take up the application on file, if it is maintainable and dispose of the same in accordance with law. The Court below, thereafter, numbered the



application as I.A.No.79 of 2017 and dismissed the same holding that the petitioner has not produced the Power of Attorney stated to be given by his son. Challenging the said order, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that the petitioner has filed the Power of Attorney deed along with application I.A.No.79 of 2017, but the Court below, without considering the same, has erroneously dismissed the application holding that Power Deed has not been produced. In support of his contention, he has also produced a certified copy of the Power of Attorney deed obtained from the Court below. He would further submit that the relief sought for by the petitioner has been allowed by this Court and the Hon'ble Supreme Court. In support of his contention, he relied upon a decision of a Division Bench of this Court in **R.R.Pauvya Vs. C.Kanagavel**, reported in **2014 (5) CTC 177**.

4. The learned counsel appearing for the respondent also fairly accepted the above submission of the learned counsel for the petitioner.

5. A perusal of the General Power of Attorney deed dated 01.07.2016 shows that the respondent in H.M.O.P.No.2 of 2017 has authorised his father viz., the petitioner, to conduct the cases on behalf of him. Considering the submission of the learned counsel for both sides, this Court is of the view that due to inadvertence, the Court below has erroneously dismissed the petition holding that the petitioner has not produced the Power of Attorney Deed.

6. So far as the relief sought for by the petitioner is concerned, it is now well settled that there is no legal impediment under the Family Courts Act, for a Power of Attorney to appear on behalf of the Principal and only legal embargo is that the recognised agent should not be a legal practitioner. Though the Power of Attorney can appear, plead and act on behalf of the party, he cannot become a witness on behalf of the party and he can only appear in his own capacity. Until the Court passes any specific order, directing appearance of the party, depending upon the facts and circumstances of the case, the personal appearance of the principal may be dispensed with. The decision relied on by the petitioner is also reiterated the same.

7. In view of the above, the order passed by the Court below in I.A.No.79 of 2017 is set aside and I.A.No.79 of 2017 is allowed. Considering the request of the learned counsel for both sides and also considering the fact that H.M.O.P. has been pending for long, the Court below is directed to dispose of H.M.O.P.No.2 of 2017 within a period of six months from the date of receipt of a copy of this order.



8. This Civil Revision Petition stands allowed accordingly.
No costs. Consequently, connected miscellaneous petitions are
closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To
The Subordinate Judge,
Aruppukottai.

+ 1 CC to Mr.J.Senthil Kumar, Advocate in SR.No.72310

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28.06.2019

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