



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**CRP(MD) No.1155 of 2019
and CMP(MD) No.6227 of 2019

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R.Ravichandran
Power Agent of R.Gokul
S/o.R.Ravichandran

... Petitioner

versus

P.Nithya
W/O.Gokul

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, praying for a direction to the Family Court, Karur, to take the unnumbered I.A.Sr.No.740 of 2019 in H.M.O.P.No.25 of 2019 on file.

For Petitioner : Mr.S.Venkatesh

ORDER

The petitioner R.Ravichandran is the father and Power Agent of one R.Gokul, who is the respondent in H.M.O.P.No.25 of 2019, pending on the file of the Family Court, Karur. Before this Court, he has filed this petition under Article 227 of the Constitution of India, praying for the relief to direct the learned Judge, Family Court, Karur, to take the unnumbered application on file, filed by him, which is pending in SR stage, i.e.I.A.Sr.No.740 of 2019.

2. Before the Family Court, Karur, one Nithya, who is the daughter-in-law of the petitioner herein, filed a petition under Section 13(i)(a) of Hindu Marriage Act, 1955, against her husband, namely, R.Gokul, who is the son of the petitioner, seeking the relief of dissolution of their marriage, solemnized on 04.02.2018. In the said petition, after assigning the case number as H.M.O.P.No.25 of 2019, the learned Judge, Family Court, Karur, ordered to issue notice to the said R.Gokul for his appearance, but, the said notice, sent to R.Gokul through post, was returned with an endorsement as “இந்த நபர் வெளிநாடு சென்றுள்ளதால் திருப்பங்குறிது”.

3. It is unfortunate that after seeing the said endorsement found in the returned cover, the learned Judge, Family Court, Karur, ordered to issue notice to the respondent through paper publication in any one of the local dailies having wide circulation in the locality. In fact, the said order was passed, after knowing the fact that the husband of the petitioner is in abroad. It is impossible to inform the husband of the respondent, who is in abroad, about the pendency of the case, through paper publication.



Furthermore, the said order was passed without receiving any formal application from the petitioner, namely, Nithya.

4. At this juncture, it is necessary to see the Judgment of this Court reported in **2011 5 CTC 308 (P.R.Ramaswami and others vs. Kasturi Travels, Proprietor, Neena Sha and others)**, in which, it was held as follows:

"Order 5, Rule 20(1), C.P.C. reads as follows:

5. Issue and Service of summons:

.....

20. Substituted service - (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court House, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

A reading of the aforesaid provisions shows that before the power under this Rule is exercised and substituted service of summon is ordered, one of the following conditions must be fulfilled to the satisfaction of the Court, (i) the defendant is keeping himself away to avoid service of summons; or (ii) for any other reasons, the summons cannot be served in the ordinary way; non-fulfilment of either condition necessary for exercise of power would amount to material irregularity and the order is liable to be set aside. Before substituted service is ordered, the Court must be satisfied that the condition precedent required for exercise of power existed, namely, that the defendant was keeping himself away with a view to avoid service of summons or, for any other reason, summons cannot be served in the ordinary way. The Court should record such finding though recording of reasons may not be necessary."

5. Applying the said principles with the case in our hand, the learned Judge, Family Court, Karur, without following the modality, which is required to be followed before passing the order under Order 5 Rule 20 C.P.C., passed an order and directed the petitioner, namely, Nithya, to publish a notice for the respondent, namely, R.Gokul, through paper publication. However, after knowing the pendency of the case, the petitioner herein, who is the father of R.Gokul, obtained a Power of Attorney Deed, dated 15.05.2019, from his son and presented an application under Order III Rule 2 and Section 151 of C.P.C, on 07.06.2019, praying to permit him as General Power of Attorney on behalf of his son R.Gokul in H.M.O.P.No.25 of 2019. After receiving the said application, the learned Judge, Family Court, Karur, pointed out some defects found in the petition filed by the petitioner and returned the same on 10.06.2019. In fact, after complying with the said defects, the petitioner represented the same before the Court concerned, but, on 15.06.2019, the learned Judge, by pointing out the provisions under Section 10 of the Family Court Act and once again returned the



application stating that the presence of the respondent Gokul is necessary for reconciliation.

6. In this regard, the petitioner herein once again represented the application on 21.06.2019, after enclosing the following Judgments rendered by various High Courts, which are as follows:

(i) LAWS(MAD) 1993 9 89 (S.M.Syed Amina Beevi vs. Thaika Sahib Alim)

(ii) LAWS(KER) 2011 6 4 (Kunhi Purayil Mukundan Naveen vs. Anjalika Dinesh)

(iii) 2019 (3) CTC 206 (A.Sarojinidevi, rep. By her Authorized Power Agent, A.Raja @ Rajaram vs. R.Arumugam)

(iv) LAWS(MAD) 2018 6 507 (Sudan Shanmugasundaram vs. Vennila)

(v) LAWS(BOM) 2018 4 17 (Harshada Bharat Deshmukh vs. Bharat Appasaheb Deshmukh)

(vi) LAWS(ALL) 2016 5 105 (Kanwalijeet Sachdev vs. State of U.P.)

(vi) CDJ 2007 MHC 1883 (R.B.K.Rajeswari Nachiar vs. N.N.S.A.Mohamed Kasim)

(vii) CDJ 2010 Ker HC 198 (Anitha Rajan vs. The Revenue Divisional Officer, Thrissur and others)

7. After receiving the said application, on 24.06.2019, the learned Judge, Family Court, Karur, again returned the application by mentioning some of the paragraphs found in the authorities relied on by the petitioner. Conclusively, it was the opinion of the learned Judge that the petition filed under Order III Rule 2 and Section 151 of C.P.C. is not maintainable before the Family Court. Under the said circumstances, the petitioner herein has approached this Court by way of this Civil Revision Petition, seeking the relief as stated above.

8. Before entering into the merits and demerits of the petition, for the easy understanding of the case, it is necessary to see the Judgments relied upon by the petitioner already referred in earlier paragraph.

(i) This Court, in a Judgment, reported in LAWS (MAD) 1993 9 89 (S.M.Syed Amina Beevi vs. Thaika Sahib Alim), has held as follows:

"I have already expressed the view that the prohibition contained in S.13 of the Family Courts Act is only a vis-a-vis a legal practitioner and not in respect of a recognised agent permissible under the provisions of O.3, R.1 of the code of Civil Procedure, which is rendered applicable by the provisions contained in S.10 of the Family Court Act to the extent to which there is no provision otherwise contained to the contra. The petitioner in my view therefore is entitled to have the papers filed or presented before the Family Court through a recognised agent in terms of Order 3, Rule 1, and such a recognised agent at any rate cannot be a legal practitioner."



(ii) Further, in the Judgment of the Kerala High Court, reported in LAWS(KER) 2011 6 4 (Kunhi Purayil Mukundan Naveen vs. Anjalika Dinesh), it has been held as follows:

"5. We also make it clear that permitting the petitioner to institute proceedings by a power of attorney will not detract from the power of the court to insist on personal appearance at any subsequent stage as contemplated in law."

(iii) Moreover, in the Judgment of the High Court of Bombay, reported in LAWS (BOM) 2018 4 17 (Harshada Bharat Deshmukh vs. Bharat Appasaheb Deshmukh), the same issue has been decided and it has been held as follows:

"12. Further, in the light of the said legal position, Family Court will not insist upon the presence of the parties before the Court and would arrange for the consent terms to be recorded either through skype or adopting any other technology and the proceedings contemplated under Section 13B of the Hindu Marriage Act, in the time schedule specified therein."

9. Even after enclosing the above decisions rendered by various High Courts, the learned Judge, Family Court, Karur, without following the principles laid down in the said Judgment, picked out the isolated paragraphs found in the above Judgments and refused to number the petition filed by the petitioner, which is nothing, but, erroneous one.

10. It is the duty of the learned Judge, Family Court, Karur, either to assign the case number or to reject the application filed by the petitioner, after hearing the arguments of the petitioner in respect of the maintainability, but, on the other hand, the learned Judge, without hearing the arguments with regard to maintainability, simply returned the petition, which is nothing, but, against the settled principles of law. I do not understand as to why the Judge was hesitating to assign the case number to the application filed by the petitioner herein. Since the husband of the respondent herein is in abroad, the affidavit filed by the petitioner before the Family Court along with the power of attorney deed given by his son, namely, R.Gokul, is very clear and proved the fact that the husband of the respondent is in abroad. Of course, it is true, under the provisions of the Family Court Act, the Courts, dealing with the matrimonial matters, should give preference for settlement or for conciliation. However, before taking the said stand, the learned Judge, Family Court, Karur, must understand the other circumstances also.

11. In fact, as of now, technologies are available for conciliation through skype and other modes. Without adopting those modes, insisting the presence of the respondent in H.M.O.P.No.25 of 2019, without hearing the petitioner herein, is not correct. Therefore, it is appropriate to give some directions to the learned Judge, Family Court, Karur, in this regard.



12. The learned Judge, Family Court, Karur, is directed to hear the argument of the petitioner with regard to maintainability and to decide the same only in accordance with law, without being influenced by the observations made in this order.

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13. The Registry is directed to return the petition filed by the petitioner herein for enabling him to present the same before the Family Court, Karur, immediately. The Registry is further directed to send other materials/records, which were received for reference, immediately to the Family Court, Karur.

14. The said exercise shall be done within a period of one month from the date of receipt of the application filed by the petitioner herein. The petitioner herein is directed to submit the application before the Family Court, Karur, within a period of one week from the date of receipt of a copy of this order.

15. With the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

The Judge,
Family Court,
Karur.

+1 CC to M/s.S.VENKATESH, Advocate (SR-77038[F] dated 23/07/2019)

COPY TO:

1 THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

2 THE SECTION OFFICER,
V.R. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
(2 COPIES)
(Para 13 given direction)

CRP(MD) No.1155 of 2019
19.07.2019