

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. Nos. 408, 414 and 425 of 2019

COMMON ORDER:

These three Revisions arise out of the same suit and same parties, and so they are being disposed of by this common order.

2. Heard counsel for the revision petitioner and the counsel for respondents in all the Revisions.

3. Petitioner had filed the O.P.No.1456 of 2012 on the file of the Judge, Additional Family Court, City Civil court Hyderabad, against the respondents for dissolution of marriage between her and 1st respondent on the ground of cruelty, and for other reliefs.

4. Counter was filed by the respondents opposing the grant of reliefs.

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5. After the evidence of the parties commenced and the evidence on the side of the petitioner was concluded, and cross-examination of RW1 was also concluded, petitioner filed I.A.No.1318 of 2018 to recall RW-1 for further cross-examination and I.A.No.1319 of 2018 to reopen the evidence of RW1.

6. In the affidavits filed in support of I.A.Nos.1318 and 1319 of 2018, it is the contention of the petitioner that after the evidence of RW1 was closed, certain applications were filed by the respondents to receive certain documents, reopen the evidence of RW2 and recall him for the said purpose and these applications were allowed, and since the documents were later filed by the respondents, it is therefore necessary to cross-examine RW1 by recalling him and reopen his evidence.

7. These applications were opposed by respondents 2 and 3. It was mentioned that petitioner had cross-examined RW1 at length running into 59 pages and took four sittings and cross-examined RW2 for five sittings running into 100 pages and that petitioner did not indicate in her application on what points the petitioner intends to cross-examine RW1. Reference is also made to some proceedings before USA Court and in Supreme Court, wherein it is alleged that petitioner made certain allegations against the 1st respondent, and so the petitioner is not entitled to recall RW1 or reopen his evidence.

8. It is admitted that certain documents were filed by the respondents after their evidence was closed after the

applications filed by the respondents were allowed, but it is stated that those documents pertain to respondents 2 and 3. It is contended that simply because the respondents filed certain documents, petitioner is not entitled to recall the witnesses and that petitioner is not entitled to any relief since the matter is posted for arguments.

9. By separate orders passed on 20.11.2018, both the applications were dismissed.

10. In the order dt.20.11.2018 passed in IA.No.1318 of 2018 while noting that the Court has power to recall a witness in the interest of justice, the Court below observed that a witness cannot be recalled for cross-examination at the mere asking. It observed that since RW1 was cross-examined at length, he cannot be recalled for further cross-examination on the ground that he gave evasive replies in his initial cross-examination.

11. Assailing these two orders, CRP.No.408 of 2019 and CRP.No.414 of 2019 have been filed.

12. Counsel for the petitioner submitted that once the respondents were permitted to file documents after the closure of their evidence, petitioner is having a right to cross-examine RW1 on those documents, that the petitioner's right

cannot be shutout, and that the Court below without properly appreciating the reason, why the cross-examination of RW1 was again being sought by reopening his evidence and recalling him, erroneously dismissed the said applications.

13. Though counsel for the respondents sought to contend that the Court below was justified in rejecting the request for reopening the evidence of RW1 and recalling him for further cross-examination on the ground that the documents filed by them pertain to RW2 and not RW1, and that RW1 was already cross-examined substantially by the petitioner, I am unable to agree with the said contentions. In a trial, no party can rely on a material, which the other party is not allowed to put to the witness of the party, who produces them.

14. Once the respondents were allowed to file documents after their evidence was closed and they did file those documents through RW2, petitioner is also entitled to cross-examination of RW1 relating to said documents and it is not for the respondents to dictate to the petitioner as to which witness she should cross-examine.

15. The Court below unfortunately does not appear to have read the contents of the affidavits filed in support of I.A.Nos.1318 and 1319 of 2018 and presumed that because of evasive answers allegedly given by RW1 earlier in his cross-examination, petitioner is now seeking to reopen the evidence of RW1 and recall him.

16. Therefore, **CRP.Nos.408 and 414 of 2019 are allowed;** the orders dt.20.11.2018 in I.A.Nos.1318 of 2018 and 1319 of 2018 are both set aside and the said I.A.s., are allowed; the 1st respondent is directed to appear before the Judge, Additional Family Court, City Civil Court Hyderabad on 15.04.2019 in the above O.P. and make himself available for cross-examination by the petitioner; the Court below shall take up and complete the cross-examination of the petitioner on the said date, or, one or two days immediately thereafter.

C.R.P.No.425 of 2018.

18. This Revision is filed by the petitioner challenging the order dt.10.01.2019 in I.A.No.1595 of 2018 in O.P.No.1450 of 2012 of the Judge, Additional Family Court, City Civil court Hyderabad.

19. In this I.A., petitioner wanted the 1st respondent to produce the following documents on the ground that during

his cross-examination as RW1, he gave evasive replies to some of the questions put to him and these documents are necessary for a just and proper adjudication of the case.

- “a) Complete copy of Indian Passport from 2012 till date with Visa, complete stampings and such other details.
- b) Complete copy of American passport from issuance till date with Visa, complete stampings and such other details.
- c) Correspondents with his attorney in USA before and during the proceedings at USA initiated by him for dissolution of marriage.
- d) Financial transactions between him and his friend Shammi from 2003 till date.
- e) E-mails Dt.23.03.2004, 30.03.2004, 15.04.2004 and 19.04.2004 from respondent No.1's E.mail ID hari_kakarla@yahoo.com addressed to Keerti(Chinni).
- f) Sure IT Solutions invoice Dt.31.12.2008 bearing No.8667 regarding Utkarsha Curyadevara.
- g) Articles of Incorporation of Sure IT Solutions Dt.17.05.2004 with business address of 20808, N 27th Avenue, Apt #2225, Phoenix, Arizona 85027.
- h) Transfer of USD 115,000 to his brother Suresh Kakarla on three dates 20.09.2000, 27.09.2006, 15.04.2009.
- i) EMIs paid for the house commencing from the purchase of property in October, 2007 till it was sold in the year 2011 along with the particulars of the amounts received from the sale of the house.”

20. It is contended by the counsel for petitioner that certain moneys were advanced on the instructions of the 1st respondent to his friend, by name Shammi, and those transactions are required to be produced by the 1st respondent in the suit.

21. Counter affidavit was filed by respondents 1 to 3 opposing the said application and giving reasons why the said documents cannot be directed to be produced.

22. By order dt.10.01.2019, the Court below dismissed the said application. It observed that the question to be decided in the OP is whether the petitioner is entitled to divorce, on the ground of cruelty, and other reliefs claimed therein; that ample evidence had already been let in and opportunities to recall PW2 and RW2 were also given and more documents were also marked and they were also cross-examined; that there is no necessity to produce passports of the 1st respondent since they are not relevant to the main OP; that the correspondence between the 1st respondent and his Attorney in the USA is also not relevant, which would be a privileged communication under the provisions of the Evidence Act, 1872; that the financial transactions between the 1st respondent and his friend are also not relevant and in any event the friend of the 1st respondent was already summoned in the Court. It also referred to other documents sought to be produced by the respondents and stated that they are also not relevant. It observed that merely because questions put in cross-examination were not properly answered by RW1, the Court cannot allow this application.

23. Assailing the same, CRP.No.425 of 2019 is filed.

24. Though counsel for the petitioner sought to contend that grave prejudice would be caused to the petitioner if the documents listed above are not directed to be produced by the 1st respondent, I am of the opinion that the petitioner cannot ask the 1st respondent to help her to prove her case.

25. Also the Court below has given cogent reasons why the documents, which the petitioner wanted the 1st respondent to produce, are not relevant and I completely agree with the said reasons.

26. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

27. Accordingly, **CRP.No.425 of 2019** is dismissed.

28. Consequently, miscellaneous petitions pending if any, in all these Revisions, shall stand closed. No order as to costs in all the Revisions.

M.S. RAMACHANDRA RAO, J

29th March, 2019.

Note: Issue CC by 03.04.2019.

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