

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1067 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.02.04.2019 in I.A.No.300 of 2019 in FCOP.No.105 of 2012 of the I Additional Family Court-cum-IV Additional District Judge, Ranga Reddy District at L.B.Nagar.

2. The said O.P. was filed by the respondent against the petitioner for dissolution of the marriage between them alleging that the petitioner had treated him with cruelty.

3. Counter affidavit was filed in the O.P. by the petitioner opposing grant of relief to the respondent.

4. After trial commenced, respondent examined himself as PW1 and he was cross-examined on 15.06.2018, 26.06.2018 and 13.07.2018 by petitioner's counsel Sri V.Srinivasa Rao. After that the petitioner was supposed to lead evidence.

5. Petitioner herself was present in the Court on 13.07.2018 and on 24.07.2018, and in her presence only the cross-examination of PW1 was conducted.

6. Petitioner then filed I.A.No.1000 of 2018 to reopen the case and to recall PW1 for further cross-examination.

7. By a detailed order dt.23.11.2018, the Court below dismissed the said application. The said order has not been challenged by the petitioner.

8. Petitioner then filed again I.A.No.300 of 2019 invoking Order XVIII Rule 17 CPC to re-call PW1 and to further cross-examine PW1.

9. In the affidavit filed in support of the said application she stated that the evidence of the respondent was closed though he suppressed certain facts and his further evidence is necessary for protection of her minor daughter. She alleged that the respondent must be made to undergo Narco Analysis and he should come into the witness box, so that truth can be elicited for proving her case. She alleged that the respondent took away their minor daughter from the college and was not allowing the child to speak on phone and poisoned her mind against her. She also alleged that he intends to kill the child since he has taken an insurance policy on her.

10. Counter affidavit was filed by the respondent opposing the said application. The respondent denied that he suppressed any facts. He also stated that his further evidence is not necessary since he had already been cross-examined at length by the counsel for the petitioner. He contended that an application filed by the petitioner to send him for Narco analysis is pending before the Court below. He alleged that unable to bear the harassment and torture of the petitioner, their daughter, who is aged 20 years, left the company of the petitioner and voluntarily joined him and that petitioner even gave a police complaint but police closed the complaint after enquiry. He also alleged that a child aged above 18 years of age is not a minor as per Hindu Adoption and Maintenance Act, 1956 and she has a right to choose to stay wherever she wants and nobody can compel her to stay elsewhere against her will. He denied that he forced or compelled the child to stay with him. He alleged that his chief-examination affidavit had been filed on 10.10.2013 and thereafter the petitioner deliberately prolonged the

same till 24.07.2018 and there is no basis for re-calling him and subjecting him to further cross-examination.

11. By order dt.02.04.2019, the Court below dismissed the said application. It noted that after PW1 had been cross-examined on 15.06.2018, 26.06.2018 and 13.07.2018 by the petitioner, and when the evidence of the petitioner was to start from 24.07.2018, petitioner had filed I.A.No.1000 of 2018 for re-opening the case for further cross-examination of PW1, but it was dismissed by an elaborate order dt.23.11.2018; that the averments in the affidavit filed in support of the I.A.No.300 of 2019 do not indicate specifically the reasons or grounds on the basis of which the petitioner intends to further cross-examine PW1; and she did not even state that she omitted certain important aspects when PW1 was being cross-examined. It relied on the judgment in **K.K.Velusamy v. N.Palanisamy**¹ and **Gayathri v. M.Girish**² and observed that under Order XVIII Rule 17 CPC though Court has got the power to re-call any witness either on its own motion or on any application filed by any party to the suit, such power is to *enable the Court to clarify any issue or doubt* in regard to the evidence let in by the parties; and such power is not to be used to fill-up the omissions in the evidence of witnesses, who have already been examined. It also observed that allegations leveled by the petitioner against the respondent about alleged protection of their daughter from the respondent cannot be considered at the stage.

12. Challenging the same, this Revision is filed.

13. Petitioner/Party-in-Person as well as the counsel appointed by the High Court Legal Services Authority, Sri Srinivasa Srikanth, made

¹ 2011(11) SCC 275

² AIR 2016 SC 3559

submissions on behalf of the petitioner and Sri P.Ramachandran, counsel for respondent, refuted the said submissions of the petitioner/petitioner's counsel.

14. It is the contention of the petitioner that though she had three opportunities on 15.06.2018, 26.06.2018 and 13.07.2018 to cross-examine PW1/respondent, she was not able to put certain questions at that point of time, though she had a counsel representing her, who cross-examined PW1.

15. She did not deny that I.A.No.1000 of 2018 filed by her for an identical purpose on an earlier occasion was dismissed on 23.11.2018 and that she had not assailed the same in this Court by way of Revision.

16. It is not a case where the cross-examination of PW1 was closed after giving the petitioner a single opportunity to cross-examine him, but it is a case where on three separate occasions the petitioner did cross-examine PW1 and she had a counsel also at that point of time, who participated in the cross-examination and such cross-examination was done in her presence. It is also not denied by the petitioner that from 24.07.2018 till date, the petitioner had avoided going into the witness box and deposing in the matter.

17. The O.P. is of the year 2012 and it is clear that the intention of the petitioner is to prolong the matter further by not getting into the witness box on one pretext or the other.

18. As rightly held by the trial Court, applications filed without any reason for re-examination of a witness cannot be permitted, and power to recall a witness under Order XVIII Rule 17 CPC ought to be used sparingly only to enable the Court to clarify any doubts on the evidence already led by

the parties and it cannot be used to fill-up the omissions in the evidence of a witness, who has already been examined.

19. For the aforesaid reasons, I find no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

20. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

21. As a sequel, miscellaneous applications, if any pending shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 11.07.2019
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