

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 08.10.2020

Pronounced on : 14.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No. 655 of 2020

and

C.M.P.No. 3383 of 2020

Mrs. A. Priyadarsini

... Petitioner

Versus

Mr. M. Kumaresh

... Respondent

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the impugned order dated 23.01.2020 passed in O.P.No.2552 of 2016 on the file of III Additional Judge, Family Court, Chennai, as unsustainable, irrational, against law, facts and equity and reject the Exhibit-P9 (CD) filed through PW2 by allowing the above Civil Revision Petition.

For petitioner : Mr. OM.Prakash (SC)
Asst. by Mr. P.Elayarajkumar

For Respondents : Mr. S.S. Karthikeyan

ORDER

The revision petitioner is the respondent in the H.M.O.P. No.2552 of 2016.

2. The Civil Revision Petition is filed by the revision petitioner/wife under Article 227 of the Constitution of India, to reject the Exhibit-P9 (CD) filed through PW2 during the trial of the H.M.O.P.No.2552 of 2016 on the file of III Additional Family Court, Chennai.

3. The petitioner/husband filed H.M.O.P.No. 2552 of 2016 before the III Additional Family Court, Chennai, to dissolve the marriage between the petitioner and the respondent on the ground of cruelty under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955. The petitioner/husband had examined himself as PW1 and Ex.P1 to Ex.P8 were marked on the side of the husband. Thereafter, one Mr.Sridhar, uncle of the husband, examined as PW2, filed one CD along with proof affidavit and also served a copy of the same to the respondent/wife therein and the CD was also marked as Ex.P9 and Ex.P10 is the receipt for retrieving the data from the mobile phone of the PW2. Mr.Sridhar (PW2), uncle of the husband, had filed proof affidavit dated 07.11.2009 stating that information sought for said to have been happened in his house. After marking of the document,

the petitioner and the respondent filed a memo alleging that they cannot be allowed to give evidence in the matrimonial dispute and the receipt of Ex.P9 (CD) is in violation of the Indian Evidence Act and filed a memo to reject the Ex.P9 and Ex.P10. The aforesaid memo was rejected by the learned III Additional Judge, Family Court, Chennai, by a docket order dated 23.01.2020. Hence, the Civil Revision Petition has been filed by the revision petitioner/wife.

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

5. The contention of the petitioner/wife is as follows.-

The memo was filed by the petitioner in O.P.No. 2552 of 2016 on the file of the III Additional Judge, Family Court, Chennai, seeking to reject the Ex.P9 marked through PW2. The memo was filed in O.P.No. 2552 of 2016 with a specific averment that without the leave of the court and complying the statutory provisions and without serving a copy of the Exhibit and without putting on notice, filing of a CD, marked as Ex.P9, by the respondent through PW2, is not permissible in the eye of law. Hence, the marking of the CD, being an electronic record and rejecting the objection by impugned order dated 23.01.2020, in the memo filed by the petitioner, is liable to be

set aside.

6. The learned counsel for the revision petitioner has also stated that whether there is any pleading in the petition as to whether the respondent is put on notice or provided with the copy of the exhibit and whether the requirement, under Section 65-B of the Information and Technology Act, was complied with, has merely permitted the PW2 to file the Exhibit and marked the same as Ex.P9. As such, the impugned order of rejecting the memo filed by the petitioner is liable to be set aside and thereby, he sought for to demark the Ex.P9 and Ex.P10.

7. The point for consideration in this revision is that whenever an Electronic Evidence is to be marked as an Exhibit the same has to be accompanied by way of an affidavit as contemplated under Section 65-B of the Evidence Act. However, in the present case, Ex.P9 being an Electronic Evidence, has been marked through PW2 without filing any of the certificate and also without seeking leave of the Court.

8. Admittedly, Mr.Sridhar (PW2), uncle of the husband, filed a proof affidavit and the same was marked as Ex.P9 and Ex.P10. Ex.P10 is the receipt for retrieving the data from the mobile of the PW2. Now, the revision petitioner/wife wanted to demark the same

on the ground that Ex.P9 was marked through PW2 without seeking the leaving of the Court, without any pleadings, without filing complying statutory provisions under Section 65-B of the Indian Evidence Act and without furnishing the copy of the said Ex.P9 to the petitioner/wife herein. On the points of marking by Compact Disc (CD) during the matrimonial proceedings by a third party to the petitioner in the matrimonial dispute was considered by the Division Bench of this Court in the case **R. Sridharan v. R.Suganya**, reported in **2018 (6) CTC 130** which is held as follows:-

"45. It is evident from Section 65-B of the Evidence Act that a Compact Disc shall also be deemed to be a document provided the conditions mentioned are satisfied while receiving the evidence in electronic form. In the decision of the Hon'ble Supreme Court in the case of **Shafhi Mohammed v. State of Himachal Pradesh, 2018 (2) SCC 801**, it was held that the applicability of procedural requirement under Section 65-B (4) of the Evidence Act has to be applied only when the Electronic evidence is produced by a person, who is in a position to produce such Certificate being in control of the said device and not of the opposite Party. As such, the requirement of Certificate under Section 65-B (4) of the Evidence Act is not always mandatory.

47. The Family Court, during the course of trial in the Matrimonial proceedings is empowered to receive the evidence in the form such as report, statement, document or any information as could be evident from Section 14 of the Family Court Act. Section 14 of the Family Court can be usefully extracted hereunder, which reads as follows:-

"14. Application of Indian Evidence Act, 1972:- A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).

20. Act to have overriding effect:- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

48. It is clear from Section 14 of the Family Court Act that the technicalities of Indian Evidence Act, relating to admissibility or relevancy of evidence are

not strictly applicable in relation to a proceedings under the Family Court Act, touching the Matrimonial disputes. Section 20 of the Family Court Act has an overriding effect over all other laws for the time being in force. Thus, the Family Court is empowered and vested with a wide discretion to take note of the evidence in any form such as report, statement, documents, information or matter that may be required to effectively deal with the real controversy in dispute. Thus, Section 14 of the Family Court Act provides a discretion to the Family Court to receive evidence irrespective of rigours of Evidence Act.

and thus, on the point of legal issue as to whether the Family Court, Chennai, can receive the evidence of third party in the matrimonial proceedings and the receipt of Compact Disc (CD) electronic device instrument, during the course of the trial in the Family Court, the said question had been answered in the affirmative. The points have also taken note of by the Hon'ble Supreme Court in the case of **Shafhi Mohammed**, referred supra, wherein, certificate recorded under Section 65-B (4) of the Evidence Act, is not always mandatory. Further, the Division Bench has held that under Section 14 of the Family Court Act, the discretion to the Family Court, in receiving the

evidence irrespective of relevancy as mentioned in the Evidence Act and hence, I find that the contention of the petitioner/wife cannot be sustained.

9. Accordingly, marking of the document as Ex.P9 and Ex.P10 by the Family Court is just and proper and it is in line with the ratio laid down by the Division Bench of this Court in the aforesaid decision.

10. Taking into consideration that Mr.Sridhar (PW2) is maternal uncle of the PW2 and he had recorded the conversation in his mobile phone and he has downloaded the data from his mobile phone in the CD and the same was marked as Ex.P9 and that Ex.P10 is the receipt for downloading the data from the mobile phone of PW2, I find that the docket order passed by the learned Family Court Judge does not suffer from any procedural irregularity or illegality warranting interference in the revision petition. Admittedly, Ex.P9 and Ex.P10 are the personal documents of the PW2 and hence, leave from the court is not necessary to mark those documents. It is a Family Court. It has got powers to permit the petitioner to examine witness other than the party and to produce document in the interest of justice and in order to decide the issue between the parties. Hence, I find that there is no merit in the Civil Revision Petition.

11. Accordingly, the Civil Revision Petition is dismissed. Further, the learned III Additional Judge, Family Court, Chennai, is hereby directed to complete the trial of the proceedings in H.M.O.P.No.2552 of 2016 as expeditiously as possible within a period of five months from the date of receipt of a copy of this order. The respondent/husband is required to handover the copy of the contents of CD in two weeks. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.12.2020

Index : yes/no
Internet : yes/no
Speaking/Non-Speaking order

msm

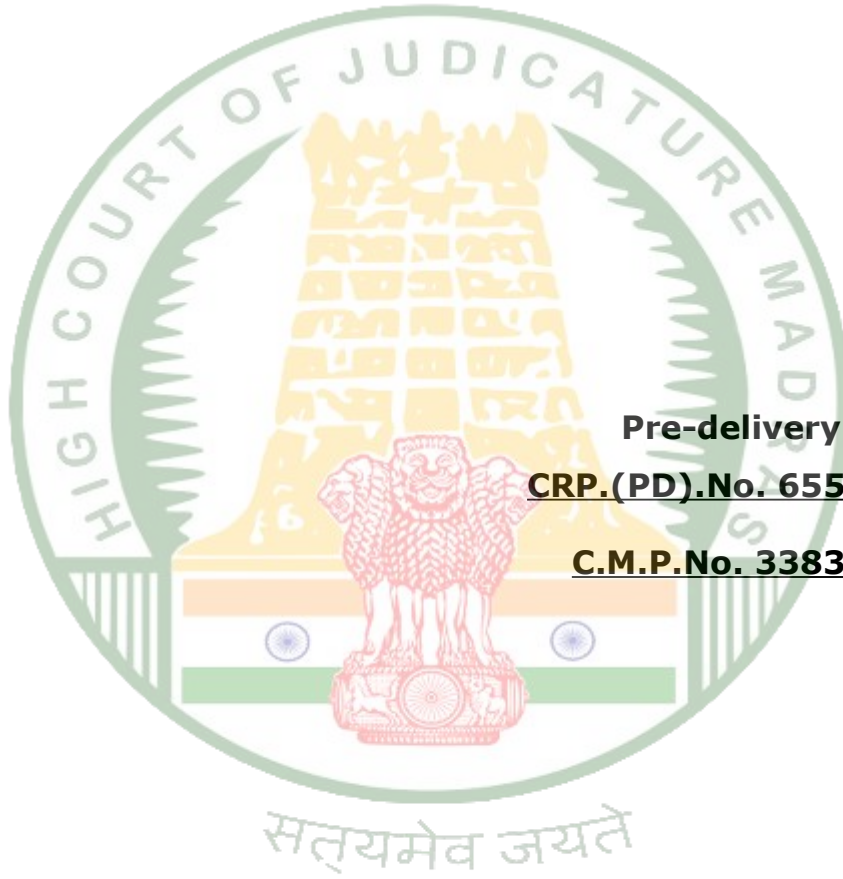
To

The III Additional Judge,
Family Court, Chennai. सत्यमेव जयते

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RMT.TEEKAA RAMAN,J.,

msm



**Pre-delivery order in
CRP.(PD).No. 655 of 2020
and
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14.12.2020