

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2020

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THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRP (PD)No.3002 of 2015
and
M.P.No.1 of 2015

S. Shabeer Ahmed ... Petitioner/Defendant
vs.

F.Samiya ...Respondent/plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the common order in I.A.No.2112 of 2015 in O.S.No.3907 of 2011 on the file of the VII Assistant City Civil Court, Chennai.

For Petitioner ... Mr.C.T.Mohan

For Respondent ... Mr.R.Abdul Mubeen

ORDER

This Civil Revision Petition has been filed by the petitioner/defendant against the dismissal of his application in I.A.No.2112 of 2015 in O.S.No.3907 of 2014 on the file of the VII Assistant Judge, City Civil Court, Chennai, dated 30.06.2015.

2. The petitioner herein had filed an application in I.A.No.2112 of 2015 in O.S.No.3907 of 2011 on the file of the VII Assistant Judge, City Civil Court, Chennai, under Section 151 of CPC to re-open the defendant's side evidence for adducing further evidence. The learned VII Assistant Judge, City Civil Court, Chennai, had dismissed the said application. Feeling aggrieved, the petitioner/defendant has filed the present Civil Revision Petition.

3. Heard Mr.C.T.Mohan, the learned counsel for the petitioner and Mr.R.Abdul Mubeen, learned counsel for the respondent.

4. The learned counsel for the petitioner has submitted that the respondent herein had filed a suit in O.S.No.3907 of 2011 on the file of the VII Assistant Judge, City Civil Court, Chennai, to declare the 'Talaq' pronounced by the petitioner herein on 21.03.2011 as null and void and for permanent injunction restraining the petitioner herein from entering into the second marriage without her consent. He further submitted that during trial, after closure of the evidence on the side of the plaintiff, the petitioner herein examined himself as DW1 and his cross-examination was over on 07.01.2014

and thereafter, the case was posted for further evidence on his side. He further submitted that on 03.02.2015, he made a request to the trial court that the proposed witness is a handicapped person and he could not be present on that day due to his ill-health, but, without considering the said request, the trial court had closed the evidence of the defendant and hence on 09.02.2015, the petitioner had filed an application in I.A.No.2112 of 2015 to re-open the case for adducing further evidence on the defendant's side but the trial court without considering the said facts, had dismissed the said application. He further submitted that the proposed witness is a material witness and unless an opportunity is given to the petitioner to examine the said witness, the petitioner cannot prove his case and hence, he requests to give one more opportunity to the petitioner to examine the said witness on his side and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed in I.A.No.2112 of 2015 and allow the said application.

5. Per contra, the learned counsel for the respondent/plaintiff has submitted that the petitioner herein had pronounced 'Talaq' illegally and hence, the respondent had filed the aforesaid suit to declare the said 'Talaq' as null and void. He further submitted that the respondent had filed the said suit in the year

2011. After four years, the suit came up for trial and during trial, the respondent had examined herself as PW1 and closed her evidence and thereafter, the matter was posted for defendant's side evidence and after taking several adjournments, the petitioner examined himself as DW1 and thereafter, he took adjournments for examining other witnesses. Even though sufficient time was given, the petitioner did not come forward to examine any other witness and taking into consideration the aforesaid facts, the trial court had rightly closed the evidence of the defendant and posted the matter for arguments and at that stage, the petitioner had filed an application to re-open the defendant's side evidence and also another application to recall the evidence of the defendant. He further submitted that already the petitioner had filed one application in I.A.No.3721 of 2014 to recall the DW1 and subsequently, the same was closed by the court as the petitioner had not come forward to examine further and that being so, the petitioner is not entitled to file a petition to re-open his side evidence and also to recall the defendant's side evidence and taking into consideration of the aforesaid facts, the trial court had rightly dismissed the said application and in the said order, this court need not interfere and prayed to dismiss this Civil Revision Petition.

6. A perusal of the typed set of papers filed by the petitioner shows that the respondent herein had filed a suit in O.S.No.3907 of 2011 on the file of the VII Assistant Judge, City Civil Court, Chennai, to declare the 'Talaq' pronounced by the petitioner herein on 21.03.2011 as null and void and for permanent injunction restraining the petitioner herein from entering into second marriage without her consent and without maintaining her and her children. The respondent entered appearance and filed written statement. During trial, after closing of the plaintiff's evidence, the petitioner herein examined himself as DW1 and thereafter his examination was completed on 07.01.2014 and the matter was posted for further evidence on 03.02.2015, but the petitioner did not produce any witness on that date and considering the same, the trial court had closed the defendant's side evidence.

7. It is to be pointed out that the petitioner has not filed any list of witnesses before the trial court either at the time of filing written statement or before commencement of trial. Further, there is no material before the court that the petitioner's counsel made any request before the trial court to grant time for examining any other witness. However, it is seen from the counter filed by the respondent in I.A.Nos.2112 of 2015 and 2113 of 2015 on that date, the learned

counsel for the petitioner herein was present before the trial court and in such a case, the trial court should have directed the learned counsel for the defendant to make an endorsement as 'closed' or if the learned counsel for the defendant has not come forward to make such endorsement and made a request to grant time for examining other witnesses, the said fact also should have been recorded by the trial court. But it appears that no such findings have been recorded by the trial court. So, it appears that the trial court itself has closed the evidence.

8. Admittedly, the previous application in I.A.No.3721 of 2014 was filed to recall DW1. Whereas now the learned counsel has not pressed the CRP.No. 3003 of 2015 which has been filed against the dismissal of the application to recall the defendant's side evidence. This Civil Revision Petition is against the dismissal of the application which was filed to re-open the evidence of the defendant. Therefore, the closure of I.A.No.3721 of 2014 will not have any bearing in this Civil Revision Petition.

9. Taking into consideration the aforesaid facts, in order to give one more opportunity to the petitioner, this court is inclined to allow this petition.

However, for the inconvenience caused to the respondent, the petitioner shall compensate her.

10. In the result, this Civil Revision Petition, will be allowed on payment of cost of Rs.2,000/- (Rupees Two Thousand Only) to the respondent either directly or through the counsel who appeared for the respondent before the trial court within a period of three weeks from the date of receipt of a copy of this order, failing which, this petition shall stand dismissed automatically without further reference to this court. Consequently, connected miscellaneous petition is closed. If the petitioner complies with the aforesaid condition within the aforementioned time, the trial court is directed to give an opportunity to the petitioner to examine the said witness on his side and thereafter, dispose of the suit within a period of four months in accordance with law.

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10.12.2020
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Index: Yes / No
Speaking Order/Non-Speaking Order
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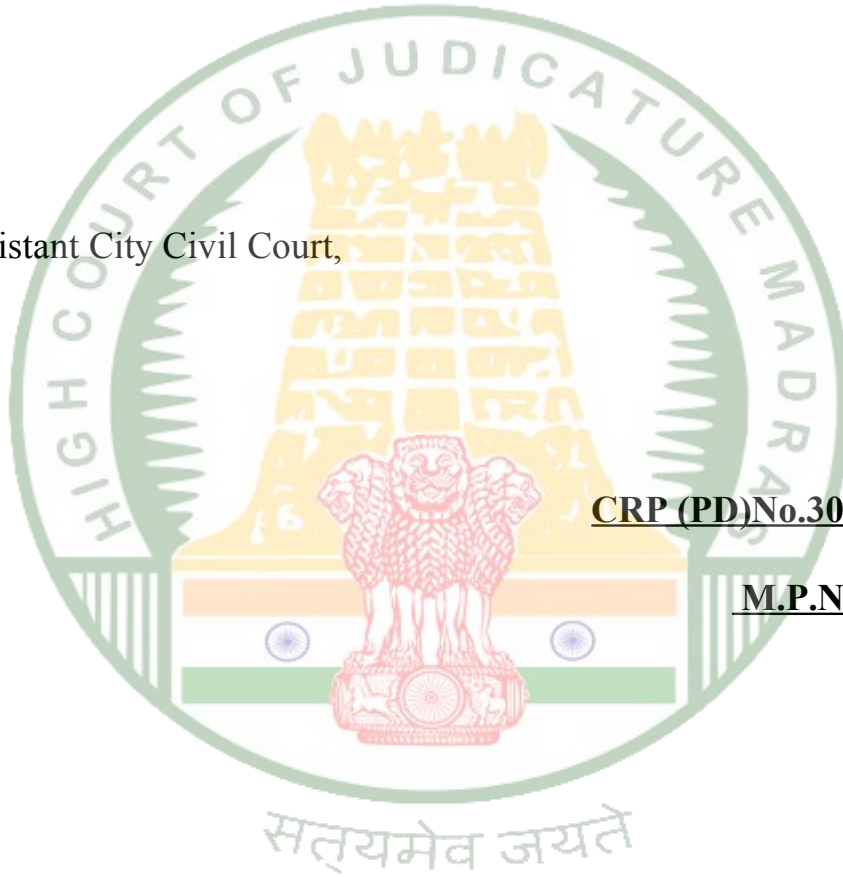
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P.RAJAMANICKAM.J.

gv

To

The VII Assistant City Civil Court,
Chennai.



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