



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Twenty Third day of March Two Thousand Twenty One

PRESENT

THE HON`BLE MR JUSTICE T.RAJA

and

THE HON`BLE MR JUSTICE G. CHANDRASEKHARAN

CMP No.888 of 2021

in CMA.No.488 of 2018

MR.G.PANDIAN
DEPUTY DIRECTOR OF AGRICULTURE,
TIRUVALLUR 602 003.

[PETITIONER]

Vs

MRS.NIRMALA

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to permit the petitioner to file the following documents 1) The Proceedings of the Director of Agriculture dated 27.08.2020 2) Depositions made by Mrs.Nirmala in departmental enquiry on 20.11.2020 as Exhibits 1 and 2 in the above CMA. (in CMP.No.888/2021)

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.V.RAGHAVACHARI for M/S.A.VEERASAMY, Advocate for the petitioner and of M/S.J.SARAVANAVEL, Advocate for the respondents the court made the following order:-

(Order of the Court was delivered by T.RAJA,J.)

This civil miscellaneous petition has been filed under Order 41 Rule 27 of CPC, seeking permission to file the following documents:

(i) The proceedings of the Director of Agriculture dated 27.8.2020; and

(ii) Depositions made by Mrs.Nirmala in departmental enquiry on 20.11.2020 as Exhibits 1 and 2 in the above Civil Miscellaneous Appeal on the side of the appellant.



2. Mr.V.Raghavachari, learned counsel appearing for the petitioner/appellant, submitted that the prayer of the appellant for dissolution of the marriage between him and the wife was refused by the trial court, against which the appeal has been filed. The appellant has knocked at the doors of the Family Court for dissolution of the marriage held between the petitioner and the respondent on 15.02.1989 on two grounds:

- (i) causing cruelty under Section 13(1)(ia) and
- (ii) desertion made by the respondent.

3. The learned trial Judge, after full trial and elaborate discussions based on the oral and documentary evidence placed before the Family Court, came to a wrong conclusion that the appellant has miserably failed to establish and substantiate the ground of cruelty for divorce, which is absolutely unacceptable.

4. Secondly, the learned counsel argued further that the respondent/wife joining hands with children has given a complaint against the appellant, alleging that he has purchased assets and pecuniary resources by using his official position to the tune of Rs.23,82,408/- which are disproportionate to the income. Based on which, the appellant was subjected to departmental proceedings by framing charges.

5. These documents are to be made available before this court while considering the ground of cruelty done to the appellant by the respondent. Adding further he argued that when the wife comes and makes the complaint against the appellant to dismiss him from service, without which he may not be able to eke his livelihood, whether the said allegation is proved or not, and that the conduct of the respondent wife going to the extent of giving a complaint to dismiss the appellant from service would definitely cause mental cruelty and this should be brought to the notice of this court. Therefore, the above application has been filed to bring on record the documents stated supra and that the application may be allowed.

6. Mr.J.Saravanavel, learned counsel appearing for the respondent/wife, heavily opposed the above application. Be that as it may, this type of application to bring on record even the proceedings of the Director of Agriculture dated 27.08.2020 and also the depositions made by the respondent/wife in the departmental enquiry on 20.11.2020 to mark as Exs.1 and 2, cannot be taken into file. The reason being that these documents were very well available at the disposal of the appellant when the matter was considered by the Family Court. Having gone after missing the bus, to bring up these documents to be marked or to be placed in the appellate court, is not permissible. The reason being that Order 41 Rule 27 is imposing a heavy condition against the appellant which he has not complied with. Saying so, Mr.J.Saravanavel, learned counsel appearing for the respondent, drawing our notice to Rule 27 (1)(a) and (aa) submitted that the party seeking production of



additional evidence, shall establish that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed. Therefore, when the appellant has come forward to bring on record the deposition and also the proceedings, to be marked as Exs.1 and 2, no sufficient cause has been placed before the court. Therefore, the condition put against the appellant in Rule 27(1) (aa) has not been complied with. So long as such statutory condition has not been complied with, the application can be thrown out.

7. In support of his contention, he also placed his reliance on the decision of the Hon'ble Apex Court in **Lekhraj Bansal Vs. State of Rajasthan and Another** reported in **2014(15) SCC 686**, wherein in the Apex Court at paragraph 6 held that the parties are not entitled to produce additional evidence in the appellate court unless the conditions stipulated under Order 41 Rule 27 CPC are satisfied. It is not the case of the appellant that the trial court had refused to admit the said evidence which ought to have been admitted. It is also not the case of the appellant that the said evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him during pendency of the suit before the trial court.

8. He also relied on yet another judgment of the Hon'ble Apex Court in **State of Karnataka and Another vs. K.C.Subramanya and others** reported in **(2014)13 SCC 468** for a proposition that if any evidence sought to be produced could not be produced at the stage of trial inspite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before appellate forum. In this case, a sufficient explanation must be offered by the appellant. In spite of due diligence, the explanation is missing in this appeal. Therefore, the application is liable to be rejected.

9. Concluding his argument, he has also placed his reliance on yet another decision of the Hon'ble Apex Court in **Satish Kumar Gupta and Others vs. State of Haryana and others** reported in **(2017) 4 SCC 760** for a proposition that additional evidence cannot be permitted to fill in lacunae or to patch up weak points in the case.

10. Heard the parties and perused the materials available on record.

11. Before answering the heavy objections raised by the learned counsel appearing for the respondent, it is relevant to extract below Order 41 Rule 27(1)(a) and (aa) for better appreciation:



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"27. Production of additional evidence in Appellate Court - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

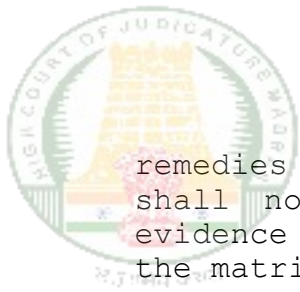
(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

12. A cursory reading of Rule 27(1)(a) and (aa) clearly shows that the party seeking to produce additional evidence must establish notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

13. But, if we move on to Order 41 Rule 27(1)(b) of CPC, it says that the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

14. In the present case, in the light of the above submission, if we look at the documents sought to be produced, they are related to an enquiry conducted against the appellant initiating departmental proceedings under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, for imposing major penalty against the delinquent and secondly, the depositions made by the respondent in departmental enquiry on 20.11.2020 sought to be placed before us to state that the respondent and her son have engineered the departmental proceedings only with an intention to harass and demolish the reputation of the appellant in order to remove him from service. Thirdly, if we look at Section 14 of the Family Courts Act, 1894, a cursory reading of the said section says that 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. Therefore, the Family Court is made with a laudable object to assist the court to deal effectually with a dispute and also to assist the parties who are coming to Family Court seeking



remedies in respect of matrimonial matter, therefore Section 14 shall not stand in any technicality to receive any additional evidence because it is enacted purely for the purpose of allowing the matrimonial matter to be proceeded smoothly between the couple.

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16. Therefore, guided by Section 14 of the Family Courts Act, 1894 and also read with Order 41 Rule 27(1)(b) of CPC, we are of the considered opinion that the application can be accepted as the same is going to help not only the parties but also the court to reach a fair adjudication on the issue.

17. Accordingly, C.M.P. No.888 of 2021 is allowed and the documents are taken on record and they are marked as Ex.P10 and Ex.P11 respectively.

-sd/-

23/03/2021

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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL JUDGE,
FAMILY COURT, CHENNAI.

Order

in

CMP No.888 of 2021

in CMA.No.488 of 2018

Date :23/03/2021

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