

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Thursday, the Fourth 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.2559 of 2021
IN CMA.NO.3513 OF 2017

R.VISWANATHAN ALIAS SURESH [PETITIONER]

Vs

MRS.V.MEENAKSHI [RESPONDENTS]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to permit the Petitioner/Appellant/Petitioner to file the following Additional documents before this Hon'ble Court in the CMA proceedings 1) the Lawyers Notice dt.12.03.13 issued by the Respondent to the various authorities 2) the Reply Notice dt. 21.03.13 sent by my counsel to the counsel for the Respondent and the various authorities 3) the affidavit filed in support of the WP filed by appellant in WP No.7758/13 on the file of this Hon'ble Court 4) the order passed in WP No.7758/13 on 26.03.13, 5) petition filed in MC 111/13 before the I Addl. Family Court Chennai for maintenance of the child, 6) petition filed in MP 261/13 in MC 111/13 not to clear my name to go to USA, 7) Lists of return of gold jewelry and silver articles cum signed acknowledgments dated 29.01.19 in CMP.NO.2559 OF 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 MR.A.PALANIAPPAN, ADVOCATE FOR M/S.V.VISWANATHAN, Advocate for the petitioner and of MRS.G.GOKULAVANI, ADVOCATE on behalf of the Respondents the court made the following order:-

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

The present C.M.P. has been filed under Order XLI Rule 27 of C.P.C. by the petitioner seeking permission to file additional documents before this Court in the C.M.A. namely, 1)the Lawyer's Notice dated 12.03.2013 issued by the respondent to the various authorities (2)the reply notice dated 21.03.2013 sent by the petitioner's counsel to the respondent's counsel and the various authorities (3)the affidavit filed in support of the writ petition

filed by the appellant petitioner in W.P. No.7758 of 2013 on the file of this Court (4)the order passed in W.P. No.7758 of 2013 on 26.03.2013 (5)petition filed in M.C. No.111 of 2013 before the I Additional Family Court, Chennai for maintenance of the child (6) petition filed in M.P. No.261 of 2013 in M.C. No.111 of 2013 and (7)list of return of gold jewellery and silver articles cum signed acknowledgments dated 29.01.2019.

2.Learned counsel appearing for the petitioner submitted that a divorce petition in O.P. No.756 of 2004 filed by the petitioner husband on the ground of cruelty under Sections 13(1)(i-a) and 26 of the Hindu Marriage Act 1955 before the I Additional Family Court, Chennai was dismissed on 02.06.2009 and as against the said dismissal, the appeal has been filed. Since the above documents were made ready only after the impugned order was passed by the Family Court, the same may be taken on record by allowing this petition.

3.Learned counsel appearing for the respondent submitted that although the counsel for the petitioner requested this Court to accept the above documents on the ground that they were not made available while passing of the impugned order, accepting the documents would create a new cause of action, for which, the respondent is required to make new defences. Therefore, they cannot be marked before this Court.

4.But we are unable to agree with the said submission made by the learned counsel appearing for the respondent. The reason being that when the petitioner husband has approached the Family Court, seeking divorce on the ground of cruelty, admittedly, those documents were not made available. Therefore, the petitioner is before this Court seeking permission to file those documents as additional documents before us. Since all those documents sought to be taken on file are made available only after the impugned order was passed, the same cannot be refused in view of Order XLI Rule 27 (1)(aa) of C.P.C. which makes it clear that 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. Therefore, we are inclined to allow this petition permitting the petitioner to file those documents, including document No.7 namely, list of return of gold jewellery and silver articles cum signed acknowledgments dated 29.01.2019.

5.Learned counsel for the respondent sought for permission to cross examine the petitioner. We do not find any justification on the contention made by the counsel for the respondent for couple of reasons that the document No.7, namely, list of return of gold jewellery and silver articles has been signed acknowledgments dated 29.01.2019, hence they have been allowed to be filed as additional documents, therefore, the same cannot create any new cause of action. Secondly, the wife has already signed and received the

6. Accordingly, the petition is allowed and the petitioner is permitted to file the above documents.

-sd/-
04/03/2021
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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE I ADDITIONAL JUDGE,
FAMILY COURT, CHENNAI.

2 THE SECTION OFFICER
VR SECTION HIGH COURT MADRAS.

Order
in
CMP No.2559 of 2021
IN CMA.NO.3513 OF 2017
Date :04/03/2021

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