



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.2036 of 2021

and

C.M.P(MD)No.10882 of 2021

Subbulakshmi

... Petitioner/Petitioner/Respondent

Vs.

Amirtharajan

... Respondent/Respondent/Petitioner

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records of the Fair and Executable order in I.A.No.8 of 2021 in H.M.O.P.No.94 of 2014 dated 26.10.2021 on the file of the Family Court, Tiruchirapalli and to set aside the same and allow this Civil Revision Petition.

For Petitioner

: Mr.A.Haja Mohideen

ORDER

The petitioner/wife has challenged the order passed by the learned Family Judge, Tiruchirapalli, in rejecting her application for issuing summons to her sister in law to adduce evidence. This application has been filed by the petitioner herein in I.A.No.8 of 2021 in H.M.O.P.No. 94 of 2014.

2.The petition in H.M.O.P.No.94 of 2014 has been filed by the respondent/husband to dissolve the marriage between the revision petitioner herein and himself on the ground of cruelty and desertion. It is his case that the petitioner herein was not interested in a matrimonial life as it would constrict her freedom. The petitioner and the respondent herein were blessed with two sons, who at the time of filing of HMOP in the year 2011 were aged 18 and 15 years respectively. The respondent / husband would submit that the petitioner herein, who had completed M.A., M.Phil.,



and Montessori Teaching Training Course, was not inclined to put the education to use. He would also submit that she suffered from a suspicious mind and was highly critical. The respondent/husband had put up with these pinpricks. Finally in August 2008, she had deserted the respondent and taken her sons away with her. The respondent/husband was therefore compelled to put his children in a boarding school at Erode from the year 2008 onwards. Even after, he had left the children at the Boarding school, the petitioner herein was disturbing the children. She had also started to call the children at late hours. The respondent would submit that the petitioner was not ready to undertake any of the maternal duties that she was expected to do. Therefore, she has come forward with the revision petition.

3.The revision petitioner had refuted the allegations contained therein as absolutely false and would contend that the respondent is having relationship with another professor, who was a divorcee and he had in fact openly stated that he would marry her and this statement had been made to her elder son. The petitioner would submit that she was treated as a maid of the house and never given the due respect that the wife deserved. The petitioner would further submit that she had established a Fitness Centre by obtaining the loan from the Government with the support of her brother and family members and the respondent/husband had not given even a single penny for the same. Therefore, his allegations, to the contrary, are absolutely false. She would submit that she had not only undergone training and counseling, but she would also counsel people. The petitioner would submit that she had, on several occasions, attempted to counsel the respondent and in this regard she had taken him to NIMHANS as well as ATHMA, but the respondent was not responding positively to the same. Owing to the mental and physical torture, the petitioner was constrained to leave the matrimonial home.

4.When the main petition was posted for the cross-examination of the petitioner as RW1, she has come forward with the above petition for re-opening the respondent side evidence. In the affidavit filed in support of the said petition, she would submit that she had taken out summons to the two sisters of the respondent. However, the letter has been returned by the witnesses. This is a deliberate one, since the witness, who are the sister in laws, are residing in the very same premises. Therefore, she sought to have the evidence reopened.

5.The respondent /husband filed an objection stating that this is yet another delaying tactics, being adopted by the petitioner. The respondent had set out in his counter the details of the petitioner herein, being set *ex parte* on four occasions and thereafter, filing the petition to set aside the *ex parte* order.



He would submit that this is one more attempt to protract the proceedings.

6.The learned Family Judge, after hearing the parties, had proceeded to dismiss the said application. The learned Judge has in very great detail stated on how many days the petitioner herein had not been present as a result of which the case could not be progressed with. The learned Judge had also observed that when the list of witnesses had been filed by the petitioner as respondent, she had not included her two sister-in-laws as witnesses on her side, which is contrary to the provision of Order 16 of CPC. Therefore, the present application deserves to be dismissed as it was yet another attempt to protract the proceedings. The learned Judge had observed that the return was on the ground that there was no such address and therefore, the petitioner, who had not earlier stated that she was going to examine these two persons, cannot be permitted to keep the matter pending. Therefore, the said application was dismissed. Challenging the same, the petitioner is before this court.

7.Heard the learned counsel for the petitioner and perused the records.

8.A mere perusal of the order passed by the learned Judge would show how the petitioner has been protracting the proceedings which has been initiated as early as in the year 2011. The matter has been adjourned for the petitioner side evidence after the lifting of the lock down on 02.12.2020, 04.12..2020 and 10.12.2020 and all these days the petitioner has not been present. Thereafter, she had only filed the proof affidavit in lieu of her chief examination. Once again, the petition was being adjourned frequently and ultimately orders came to be passed on 27.01.2021 allowing the interlocutory applications in I.A.Nos.3 and 4 of 2020. thereafter, once again, the matter was adjourned for over ten occasions for the appearance of the respondents. The cross-examination had ultimately taken place on 14.09.2021 and the matter was adjourned for further evidence on 17.09.2021. Thereafter, the present application has been filed.

9.This would clearly show how the petitioner is not keen on proceeding with the HMOP and has been protracting the proceedings at each stage. That apart, summons has been returned as no such addressee and such being the case, the evidence cannot be reopened, particularly, when the petitioner has already concluded her evidence as R.W.1 and witnesses, to whom summons has been issued, had not appeared before the Court. The learned Family Judge has rightly dismissed the application and I do not find any ground to interfere with the above order.



10. In the result, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Judge, Family Court,
Tirchirapalli.

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MGJ(12.01.2022) 4P 2C