



C.R.P(PD).No.441 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P(PD).No.441 of 2022
and C.M.P.No.2991 of 2022

P.Kabilan

... Petitioner

Vs

D.Kavya Kalpana

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded set aside the judgment and decree dated 19.11.2021 made in I.A.No.5 of 2021 in HMOP No.956 of 2019, on the file of the Additional Principal Family Court, Coimbatore, insofar as it relates to the dismissal of the prayer for examination of further witnesses is concerned.

For Petitioner : Mr.A.E.Ravichandran

For Respondent : Mr.M.Mariappan

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ORDER

This Civil Revision Petition has been preferred challenging the order of the learned Additional Principal Family Judge, Coimbatore dated 19.11.2021 made in I.A.No.5 of 2021 in H.M.O.P.No.956 of 2019.

2. The revision petitioner is the husband and the petitioner in H.M.O.P.No.956 of 2019. During the pendency of the proceedings, three petitions were filed in I.A.Nos.4 of 2021, 5 of 2021 and 6 of 2021 for the purpose of receiving additional documents, to reopen the evidence of the petitioner and for letting further evidence by examining further witnesses and also to recall P.W.1 for further cross examination respectively. The learned trial Judge allowed the petitions to receive further documents and for recalling P.W.1 for further examination; but, the petition filed in I.A.No.5 of 2021, to reopen the evidence of the petitioner and for further evidence was also partly allowed and the relief was granted for the limited purpose of further examination of P.W.1 alone and not to examine any more witnesses.



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3. Learned counsel for the petitioner submitted that the Court ought not to have restricted the petitioner's right to examine any number of witnesses and the order as such passed in I.A.No.5 of 2021 is not legal.

4. The context in which the impugned order in I.A.No.5 of 2021 was made has to be seen before concluding about its illegality. The records would show that before filing the above said three Interlocutory applications, the petitioner side evidence was closed. Subsequently, the petitioner filed the petitions to reopen the case for further evidence, to receive the additional documents and also to recall P.W.1 for further examination.

5. Learned counsel for the petitioner submitted that reason for filing these petitions originated from the evidence of R.W.2, where he produced certain documents, as Exs.R4 and R9. Since, Ex.R4 is a receipt dated 09.11.2017, issued by a lodge and the original of Ex.R4 is Ex.R9; in view of the production of the Ex.R4 Lodge receipt, the petitioner would intend to call the Lodge Manager and



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examine him about the genuineness of the lodge receipt and hence these petitions were filed.

6. While appreciating the merits of these petitions, the learned Additional Principal Family Judge, Coimbatore thought it is fit to allow the case to be reopened for the limited purpose of receiving additional documents and to recall P.W.1 for further cross examination. In fact, the relief, seeking permission of the Court to examine further witnesses, ought not to have been clubbed with the petition filed to reopen the evidence. Since, the revision petitioner has filed a separate petition to recall P.W.1 for further examination, the prayer to examine further witnesses ought to have been prayed in that petition itself. Since, irrelevant prayers have been mixed, the learned Additional Principal Family Judge, Coimbatore needed to restrict the right of recall for further cross examine P.W.1 alone. So, the impugned order cannot be interpreted in the way that the learned Additional Principal Family Judge, Coimbatore has restricted the right of the petitioner to examine only one witness.



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7. Even in the context of the production of Ex.R4, it is the burden of the respondent to prove its genuineness and relevancy. Had there been a separate petition filed for recalling further witnesses, it will be convenient for the Additional Principal Family Judge, Coimbatore to pass appropriate orders considering the merits of the same.

8. With the above observations, this Civil Revision Petition stands disposed and the petitioner is given with a liberty to file a separate petition for recalling further witnesses for further examination and in the event of such petition is filed, the learned Additional Principal Family Judge, Coimbatore shall pass appropriate orders after considering the merits and in accordance with law. Consequently, the connected Miscellaneous Petition is closed. No costs.

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R.N.MANJULA, J.

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To

1. The Additional Principal Family Judge,
Coimbatore.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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