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C.R.P(PD).No.1512 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).No.1512 of 2022
and C.M.P.No.7677 of 2022

R.Radhika

...Petitioner

..Vs.

G.Ramesh Babu

..Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order of the Principal Family Court, Chennai dated 18.04.2022 made in I.A.No.4 of 2022 in O.P.No.3980 of 2019.

For Petitioner : Mr.M.Vijaya Kumar

For Respondent : Ms.M.Saral for
Mr.J.Saravanavel



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ORDER

This Civil Revision Petition has been preferred challenging the order of the Principal Family Court, Chennai dated 18.04.2022 made in I.A.No.4 of 2022 in O.P.No.3980 of 2019.

2.Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the entire materials available on record.

3.The revision petitioner is the wife, who has filed an interlocutory application in I.A.No.3 of 2020 to recall P.W.2 and the same was allowed. However, the respondent/husband has filed another interlocutory application in I.A.No.4 of 2022 by stating that P.W.2 Govindarajulu who is his father, is a senior citizen and he is not able to make himself present before the Court and hence, the Court should appoint an Advocate Commissioner to get the examination of P.W.2 done at his residence himself. While allowing the said application on 18.04.2022, the learned



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Principal Judge, Family Court, Chennai has ordered to bear the cost of the Commissioner by the wife. Aggrieved over that, the petitioner/wife has preferred this revision petition.

4.The learned counsel for the petitioner submitted that the wife has got no job of her own and it is difficult for her to bear the expenses towards the appointment of the Commissioner and further, the wife did not file any application seeking appointment of the Commissioner; if P.W.2 attends the Court, the petitioner is ready to cross examine him in the Court itself; since the application for appointment of the Commissioner is filed at the instance of the respondent/husband, the respondent /husband should be ordered to bear the cost of the Commissioner.

5.The learned counsel for the respondent submitted that though P.W.2 has already been cross examined, the wife has filed the application to recall him once again. Hence, the respondent/husband was forced to



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file the application for appointment of Commissioner only in view of the application filed by the wife to recall P.W.2 and hence it is right for the learned trial Judge to order the cost to be borne by the petitioner/wife herself.

6.It is true that the wife who is the revision petitioner herein could have cross examined P.W.2 at the time when he was present at the first instance before the Court. The learned counsel for the petitioner submitted that due to the pendency of the other proceedings, cross examination of P.W.2 could not be completed. However, it is seen that the liberty was given to the revision petitioner/wife to recall P.W.2. The respondent has filed an application for appointment of the Commissioner on the health ground of P.W.2.

7.Considering the financial capability of both the parties and other attending circumstances, I feel that the cost towards the Commissioner shall be borne by both the parties equally and the order of the learned trial Judge should be modified to that extent.



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8.In view of the above, this Civil Revision Petition is allowed and the impugned order passed by the learned Principal Judge, Family Court, Chennai is modified to the effect that I.A.No.4 of 2022 is allowed and the cost of the Commissioner shall be borne by both the petitioner and the respondent equally. No costs. Consequently, connected Miscellaneous Petition is also closed.

26.08.2022

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Index:Yes No

Speaking Order:Yes/No

To

1.The Principal Judge,
Family Court, Chennai.

2.The Section Officer,
VR Section, Madras High Court, Chennai.

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R.N.MANJULA,J.

Vkr

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