



C.R.P.No.4237 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.12.2022

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THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4237 of 2022

Karthick

... Petitioner

Vs.

S.Kusum

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order made by the learned Principal Judge dated 26.10.2022 returning the petition filed in HMOP Sr.No.5200 of 2022, refusing to entertain the same by directing the learned Principal Judge to number the petition and process the same in accordance with law and thus, render justice.

For Petitioner : Mr.R.Manickavel



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ORDER

The Civil Revision Petition has been filed to set aside the docket order made by the learned Principal Judge dated 26.10.2022, returning the petition filed in HMOP Sr.No.5200 of 2022, refusing to entertain the petition and to direct the Principal Judge Family Court, to number the HMOP.

2. The marriage between the revision petitioner and the respondent was solemnised on 29.10.2020 as per the Hindu rites and customs. The petitioner and the respondent are living separately on account of certain misunderstandings.

3. The petitioner/husband filed HMOP Sr.No.5200 of 2022 through, his power agent and father Mr.Gangadurai. The said HMOP was returned by the Family Court noting certain defects. The petitioner complied with the defects and represented. Not satisfied with the compliance report, the Principal Judge Family Court again returned the papers on account that



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the power of attorney document, submitted on behalf of the petitioner/husband is to be adjudicated before the competent authority.

4. The learned counsel for the petitioner mainly contended that no such adjudication is required since the power attorney is a valid document under provisions of the Indian Evidence Act. The Family Court has erroneously returned the papers and thus, the said docket order returning the HMOP is to be set aside.

5. In this context, the Division Bench of the High Court of Madras in the case of ***Sudha Ramalingam Vs. Registrar General, High Court of Madras, reported in CDJ 2015 MHC 984***, held that “*the permission declined by the Family Court to be represented through the Power of Attorney was assailed before the High Court and it was observed and there is no legal impediment to grant permission for the party to be represented by the Power of Attorney, especially where parties are the residents abroad and having children to look after. Of course, if the Court feels the necessity of counselling in settlement, it can be asked to appear at that stage.*”



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6. With reference to the judgment of the Division Bench, there is no impediment for the petitioner to represent his case through an authorised Power of Attorney and in this regard, the Power of Attorney document is presented before the Family Court along with the HMOP. Question arises, whether the power is to be validated under the provisions of the Act or every power is to be accepted by the Family Court. Any document presented must be accepted only if it is a document within the provisions of law.

7. Under Section 32 of the Registration Act 1908, persons to present documents for registration is enumerated. Section 33 deals with the Power of Attorney recognisable for the purpose of Section 32. Section 33(1)(A) stipulates that *“if the principal at the time of executing Power of Attorney resides in any part of India in which his act is for the time being enforced, a Power of Attorney executed before and authenticated by the Registry and Sub-Registrar, within whose district or sub-district the Principal resides. Therefore, the Power of Attorney is to be adjudicated before the competent authority under the Provisions of the Registration Act*



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for the purpose of ascending the said Power of Attorney, under Section 32 of the Act for the purpose of acting upon the Power of Attorney document. The Power of Attorney being an instrument is to be validated for the purpose of acting in terms and conditions of such Power of Attorney. Invalidated Power of Attorney cannot be taken into consideration for the purpose of representing the case on behalf of the petitioner.”

8. In the present case and if such an invalidated document is accepted, then there is likelihood of abuse of process by the persons since the Family Courts are dealing with the matrimonial dispute between the husband and wife. Thus, the document of Power of Attorney is to be validated before the competent authority under the Registration Act, more specifically with reference to Section 32 and 33(1)(A) of the Act. In the present case, the Principal Judge Family Court has rightly returned the HMOP on the ground that the Power of Attorney has not been validated. Thus, the petitioner is at liberty to validate the Power of Attorney and present the same before the Principal Family Court for its acceptance and for numbering the HMOP by following the procedures as contemplated.



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S.M.SUBRAMANIAM.J.,

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9. Accordingly, with these liberties, the present Civil Revision
Petition stands **disposed of**. However, there shall be no order as to costs.

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23.12.2022

Index: Yes

Internet: Yes

Speaking Order

To

1. Principal Judge Family Court, Chennai.

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