



C.R.P.No.4093 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2022

CORAM

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

C.R.P. No. 4093 of 2022

and

CMP.No.21263 of 2022

R.P.Senthil Kumar

... Petitioners/Petitioners/Plaintiffs

Vs.

D.R.Nithya

... Respondents/Respondent/Applicants

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.11.2022 made in I.A.No.05 of 2022 in O.P.No.58 of 2020 on the file of the Ld. Family Court, Dharmapuri by allowing the Civil Revision Petition.

For Petitioner : Mr.N.Manoharan



C.R.P.No.4093 of 2022

WEB COPY

ORDER

The fare and decretal order dated 10.11.2022, passed in I.A.No.5 of 2022, in O.P.No.58 of 2020, is under challenge in the present revision petition.

2.The revision petitioner and the respondent are husband and wife. The revision petitioner filed H.M.O.P. for restitution of conjugal rights against the respondent herein. The respondent herein filed an interlocutory application in I.A.No.5 of 2020 under Order 18, Rule 3-A of CPC, praying the Trial Court that the father of the respondent has to be permitted to examine RW1 in the H.M.O.P. proceedings. The Trial Court adjudicated the issues and made a finding that *“according to Order 18, Rule 3-A of CPC, the party has a chance to examine any witness with the permission of the Court prior to examination of parties, and if the Court considers, the respondent's side witness can be examine prior to the respondent”*. It is the choice of the parties who can come into the witness box accordingly to their choice. While so, there is no impediment for the respondent herein to



C.R.P.No.4093 of 2022

examine her father as RW-1.

WEB COPY

3. Even in case, the father of the respondent gives evidence before the Court, the revision petitioner herein will get an opportunity to cross-examine him. Ultimately parties must be afforded an opportunity to defend their case and also to choose the person to bring into the box as a witness to examine him. The principles are to be complied with by either of the parties. Even in case, if the revision petitioner is willing to examine his witness as a first witness, that also is to be permitted. Thus, such a choice conferred under the Code of Civil Procedure need not be taken away by the Court unnecessarily. Mere apprehension of the parties cannot be considered since they get an opportunity to cross-examine the witness for the purpose of establishing their case or to defend their case.

4. Ultimately parties should confine the Courts in respect of the grounds raised by them. The Court has to avail the documents evidence and set aside the issues. Thus, this Court does not think that the Trial Court has committed a perversity in allowing the petition filed by the respondent



C.R.P.No.4093 of 2022

WEB COPY

herein, under order 18 rule 3-A of CPC. The revision petitioner has to avail the opportunity and cross-examine the witness and establish his case in the manner known to law.

5. Accordingly, the civil revision petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

sha

09.12.2022

Index: Yes
Internet: Yes
Speaking Order: Yes

To

1. Ld. Family Court, Dharmapuri



WEB COPY



C.R.P.No.4093 of 2022

S.M.SUBRAMANIAM.J.,

sha

C.R.P.No.4093 of 2022

09.12.2022