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C.R.P. (PD) No.4227 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.08.2022

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

C.R.P. (PD) No.4227 of 2019

V.S.Gladys Kezia

... Petitioner

Vs.

J.Wesly Raj

... Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.08.2019 made in I.A.No.1 of 2019 in I.D.O.P. No.3970 of 2019 on the file of the IV Additional Judge, Family Court, Chennai.

For Petitioner : Mr.V.Chandrakanthan
For Respondent : Mr.K.Gajendran

ORDER

Today, this Civil Revision Petition has been posted under the caption “for clarification”. Earlier on 12.07.2022, when this petition came up for hearing, this



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Court has dismissed the same. Later at the time of signing the order, this Court ascertained certain other material facts and wanted to clarify the same with the learned counsels and therefore, listed the same under the caption 'for clarification'.

2. It is seen that this Civil Revision Petition has been filed, against the order dated 29.08.2019 passed in I.A.No.1 of 2019 in I.D.O.P. No.3970 of 2019 on the file of the IV Additional Judge, Family Court, Chennai, whereby the learned Judge, partly allowed the petition filed by the respondent/husband to receive mobile phone for inspection of messages alleged to be sent by the petitioner/wife. The brief facts of the case that are necessary for the disposal of the Civil Revision Petition are as follows:

2.1. The petitioner/wife and respondent/husband got married on 22.08.2012. Due to strained relationship, the respondent/husband filed a petition in I.D.O.P. No.3970 of 2019 seeking for divorce. The petitioner/wife filed her counter statement and denied all the averments mentioned in the Original Petition. At the stage of trial of the I.D.O.P., the respondent/husband filed a petition in I.A.No.1 of 2019, praying for a direction to receive the cell Phone No.90436 33176 with SMS



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sent by the petitioner/wife to him and to mark the same as a documentary evidence on his side to substantiate his averments regarding cruelty caused by his wife.

2.2. The learned Trial Judge after considering the petition averments and counter, partly allowed the petition and directed the parties to be present on 04.09.2019 at 03.00 p.m., at the Chamber for inspection of the alleged messages contained in the said mobile phone and if the same are disputed by the petitioner/wife, then the mobile phone shall be ordered to be sent to the expert for getting copies along with a certificate under Section 65 – B of the Indian Evidence Act. Aggrieved against the said order passed in I.A.No.1 of 2019, the petitioner/wife has preferred the present Civil Revision Petition.

3. According to the learned counsel for the petitioner/wife, the learned Trial Judge ought not to have given a direction to send the mobile phone to get expert certificate in the absence of any prayer sought by the respondent/husband in his petition, seeking for an expert certificate. There was no pleadings made by the respondent/husband in his divorce petition, to the contention that the petitioner/wife



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has sent a SMS with vulgar and unparliamentary words. It is also submitted by the learned counsel for the petitioner that the case is presently under trial and the stage of cross-examination of the witnesses is also over and at this stage, the respondent has filed the Interlocutory Application with an intention to drag on the proceedings. The learned counsel further argued that earlier this Honourable Court has given a direction to the learned Trial Judge, to dispose of the case on or before June 2019 and in such circumstances, I.A.No.1/2019 filed by the respondent/husband is nothing but with the intention to drag on the proceedings and hence, the learned counsel for the petitioner prayed to set aside the order made in I.A.No.1 of 2019 in I.D.O.P. No.3970 of 2019 on the file of the IV Additional Judge, Family Court, Chennai and allow the present revision.

4. Per contra, the learned counsel appearing for the respondent/husband would submit that the direction given by the learned Judge in I.A.No.1 of 2019 will not result in any hardship or prejudice to the petitioner/wife and the order needs no interference and therefore, prayed for dismissing the revision.



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5. Perusal of records would reveal that in the main I.D.O.P., the stage of examination of parties has already been completed and now, the case is at the stage of further witnesses, if any, on the side of the petitioner/wife. The main contention of the learned counsel for the petitioner is that there is no pleadings in the petition stating about the SMS, which allegedly contains vulgar and unparliamentary words. It is a well settled principle that in the absence of pleading, any amount of evidence will not help the party. The said proposition has also been relied in the judgment made by the Hon'ble Supreme Court in ***Biraji @ Brijrahi & Another vs. Surya Pratap and others*** in Civil appeal Nos.4883 & 4884 of 2017. Relying on the above principle laid down by the Hon'ble Supreme Court, this Court is of the considered opinion that the learned Trial Judge ought to have rejected the plea made by the respondent/husband and dismissed the I.A.No.1 of 2019 in I.D.O.P. No.3970 of 2019. Therefore, the said order passed by the Trial Court warrants interference at this juncture. Accordingly, this Civil Revision Petition stands Allowed. No costs. Consequently connected miscellaneous petition is closed.



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Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order

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To:

- 1.The IV Additional Judge, Family Court, Chennai.
- 2.The Section Officer, V.R.Section
High Court of Madras.



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J.NISHA BANU,J.

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