



C.R.P (MD) No.1436 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

C.R.P (MD) No.1436 of 2022

and

C.M.P (MD) No.5971 of 2022

Premkumar @ Elavarasan

... Petitioner

Vs

Jeevitha

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 17.06.2022 passed in I.A.No.4 of 202 in HMOPNo.93 of 2020 on the file of the Family Court, Karur.

For Petitioners : Mr.M.P.Senthil

ORDER

As against the orders of the Family Court in I.A.No.4 of 2022 in HMOPNo.93 of 2020, the present civil revision petition has been filed.

2.The petitioner filed a petition for divorce in HMOPNo.93 of 2020 on the ground of cruelty and adultery.



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The respondent has not adduced her evidence and therefore, the trial Court closed the evidence of the respondent and posted the matter for arguments. At this stage, the application in I.A.No.4 of 2022 was filed on behalf of the respondent by the learned Counsel stating that due to the failure on his part, the evidence was not adduced by the respondent. The trial Court condemned the manner in which, the affidavit has been sworn in by the learned Counsel for the respondent. However, in order to provide an opportunity to the respondent, the trial Court allowed the application by order dated 17.06.2022. Aggrieved over the same, the present civil revision petition has been filed.

3.The learned Counsel for the petitioner by referring the decision of this Court in Antony Devaraj and Another and Aralvaimozhi (Kurusadi) Devasahayam Mountoor and Thuya Viagula and others reported in (2004) CTC 183, submits that that the Court while coming to the conclusion that it is not a healthy practice to permit an Advocate to file an application on behalf of the party, ought to have dismissed the application with liberty to the respondent to file a fresh application. However, the application filed by the



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Advocate was allowed. Therefore, the impugned order is liable to be set aside.

4.The learned Counsel further submits the petitioner has filed the main petition for divorce on the ground of cruelty and adultery. However, the respondent has not come forward to let in her evidence and only in order to harass the petitioner, such kind of delaying tactics are adopted.

5.Heard the learned Counsel for the petitioner and perused the materials placed on record.

6.The trial Court in fact allowed the application to reopen the case, filed by the Advocate of the respondent. The main petition was filed in the year 2020. The respondent has not adduced her evidence and therefore, the respondent's side evidence was closed and the case stands posted for arguments. At this stage, the Advocate of the respondent has filed an application for reopening of the case. The trial Court has condemned the practice adopted by the learned Advocate to file an affidavit on behalf of the respondent. However, the trial Court in order



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to provide an opportunity to the respondent, has allowed the application for reopening of the case filed by the Advocate.

7.This Court in the above referred judgment by the learned Counsel for the petitioner has held as follows:

"12. Before parting with these cases, this Court is constrained to refer to the practice adopted in the lower Courts.

(a) *It is brought to the notice of this Court that before the trial Court, in this case, instead of the party filing affidavit in the form of counter, the Advocate concerned, on behalf of the first defendant, has filed counter. This practice is not a healthy one.*

(b) *In this context, it would be relevant to refer to the following observations made by Justice M. Srinivasan, as he then was, reported in [Nagarajan.V.P. v. Prabhavathi](#), 1989 (1) L.W. 543 and the relevant portions of the headnote of the same are as follows:-*

In recent times, an unhealthy practice has grown up among the members of the Bar to come



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out with affidavits in support of their clients even without the clients themselves filing affidavits setting out the facts. Unfortunately the implications and consequences thereof have not been realised by them. Under Order 19, Rule 2, C.P.C., affidavit will be evidence in an application and the Court could order cross-examination of the deponent. Thus the advocate who files an affidavit in support of an application is liable to be cross-examined and by filing the affidavit, he takes the role of a witness.

The Bar Council of India has framed rules under Section 49(c) of the Advocates Act, 1961. The indiscriminate way in which affidavits are filed by counsel on records nowadays make the Court doubt whether any of them is aware of the above rule."

(c) It is also brought to the notice of this Court by both the counsel that in Kanyakumari District, all the Advocates would follow the regular practice of filing affidavit, counter affidavit or petition on behalf of the parties, without the affidavits sworn to by the parties and the same are entertained by the lower Courts. This practice must be, atleast in the future, stopped.



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(d) Therefore, learned Principal District Judge, Kanyakumari District is directed to give administrative direction to all the subordinate judiciary in the Kanyakumari District, not to entertain the petition or affidavits on behalf of the parties, from the Advocates, without the affidavits sworn to by the parties."

8. In view of the above direction and also in view of the provisions referred to therein, this civil revision petition is allowed at the admission stage itself. The impugned order is set aside. The respondent is at liberty to file a fresh application for reopening of the case within a period of one month from the date of receipt of a copy of this order and on filing of such an application the trial Court shall consider and proceed with the trial and conclude the same within a period of three months therefrom. No costs. Consequently connected miscellaneous petition stands closed.

14.07.2022

dsk



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To

The Judge,
Family Court, Karur.

Copy to :

Jeevitha,
W/O.Premkumar alias Elavarasan,
D/O.Pitchaimuthu,
Koyampalli village,
Manmangalam Taluk,
Karur District.



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B.PUGALENDHI , J.

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