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REV.APLC(MD)No.160 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**REV.APLC(MD)No.160 of 2022
and
C.M.P(MD)No.11601 of 2022**

G.Sujitha
Rep. by her power agent
R.Govindarajan

... Petitioner

-Vs-

S.Mohan Kumar

... Respondent

PRAYER: Review Petition filed under Order 47 Rule 1 r/w Section 114 of the Civil Procedure Code to review the order passed by this Court in Tr.CMP(MD)No.515 of 2022, dated 26.10.2022.

For Petitioner : Mr.VR.Shanmuganathan

For Respondents : Mr.R.R.Kannan

ORDER

This review application is filed by the petitioner / wife to review the order passed by this Court in Tr.CMP(MD)No.515 of 2022, dated 26.10.2022.



2.The Transfer Civil Miscellaneous Petition was filed by the petitioner / wife to transfer the case in HMOP.No.278 of 2021 from the file of the Family Court, Dindigul to the file of the Family Court, Coimbatore, on the ground that the petitioner's father, namely, R.Govindarajan, who is following the case as her power agent, is suffering with certain ailments. This Court, considering the stage of the proceedings in HMOP.No.278 of 2021 and also considering the fact that the petitioner is contesting the case only through her power agent, dismissed the transfer civil miscellaneous petition with a direction to the trial Court to conclude the proceedings and dispose of the petition in HMOP.No.278 of 2021 within a period of three months. To review this order, the petitioner has moved the instant application stating that certain facts have not been placed before this Court.

3.Learned Counsel appearing for the petitioner submitted that the petitioner has filed HMOP.No.418 of 2022 before the Principal Sub Court, Coimbatore, seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act. The pendency of this application was not brought to the notice of this Court while hearing Tr.CMP(MD)No.515 of 2022. He further submitted that the issue pending before the Court at Dindigul [petition for divorce] and the Court at Coimbatore [petition for restitution of conjugal rights] are one and the same and therefore, both of them have to be heard together, in order to avoid any conflicting orders.



4.He further submitted that the petitioner is working at Hyderabad and her father / power agent is residing at Coimbatore. For each and every hearing, the petitioner has to come to Coimbatore to take her father and to attend the Court at Dindigul. For attending a hearing, she has to take leave for two days, which is very difficult for her. In view of the order passed by this Court to dispose of the proceedings within a period of three months, the trial Court is conducting the case in a weekly basis. If the case is transferred to Coimbatore, then she can manage to attend the hearing by availing leave for one day. By referring to the decisions of the Hon'ble Supreme Court, the learned Counsel contended that the convenience of the woman has to be given paramount consideration.

5.He further submitted that while dismissing the transfer civil miscellaneous petition, this Court has held that though the power agent of the petitioner claims to have certain medical ailments, the same was not substantiated with sufficient documents, excepting the scan report, where the findings are normal. In fact, there are several documents available showing the medical condition of the petitioner's power agent and the same were not placed before this Court at the time of hearing of the transfer application. Therefore, he prayed for allowing this application.

6.Learned Counsel appearing for the respondent submitted that the petition in HMOP.No.278 of 2021 was filed by the respondent / husband seeking divorce



before the Family Court, Dindigul. The petitioner / wife was in abroad at that time and by referring the same, she filed an application in I.A.No.205 of 2022 to permit her to contest the case through her father, as a power agent. The trial Court dismissed the said application, however, this Court, in CRP(MD)Nos.1561, 1562 of 2022, dated 01.08.2022, permitted the petitioner to contest the case through her power agent / father. Thereafter, the respondent / husband was examined by the trial Court on 22.08.2022 and documents were marked. The respondent was also cross examined by the petitioner on 15.11.2022. Thereafter, the petitioner / wife was examined on 19.11.2022 and she was also cross examined on the same day. The respondent / husband has completed the arguments on 01.12.2022 and the case is now posted for the arguments of the petitioner on 07.12.2022.

7.He further submitted that the respondent / husband has filed HMOP.No. 278 of 2021 seeking divorce on 27.09.2021 and the petitioner / wife has filed HMOP.No.418 of 2022 seeking restitution of conjugal rights only in the month of October, 2022, nearly after a year. The grounds raised by the petitioner in this application were already considered and rejected by this Court and therefore, he prayed for dismissal.

8.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.



9.The petitioner has moved this review application on the ground that this Court has not taken note of the pendency of the proceedings in HMOP.No.418 of 2022 before the Principal Sub Court, Coimbatore and that in view of the order passed by this Court, the Family Court, Dindigul is conducting the trial in a weekly basis and that it is very difficult for the petitioner to avail leave for two days for attending a hearing before the trial Court at Dindigul.

10.The scope of a review application is very limited. Unless there is an error apparent on the face of the record, the review application could not be entertained. Admittedly, the petition seeking divorce, which was sought to be transferred, was filed as early as on 27.09.2021. The trial has already completed and the case is now pending at the stage of arguments. Both the parties have already let-in their side evidence. The respondent / husband has also completed the arguments and the petitioner's side arguments is yet to be completed.

11.Considering the stage of the proceedings and also the fact that the petitioner is being represented by a power agent, this Court dismissed the transfer civil miscellaneous petition. While dismissing the application, this Court, considering the difficulty expressed by the petitioner, directed the trial Court to dispose of the proceedings within a stipulated time limit.



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B.PUGALENDHI, J.

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12. There is no error apparent on the face of record that warrants a review and the petitioner has not made out a case for reviewing the earlier order. In fine, this review application stands dismissed. No costs. Pending miscellaneous petition stands closed.

Internet : Yes
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09.12.2022

**REV.APLC(MD)No.160 of 2022
and
M.P. (MD) No. 2 of 2010**