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C.R.PD.No.1506 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 6/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.1506 of 2023

a n d

C.M.P.No.9943 of 2023

A. Thiyagarajan

...

Petitioner

Vs

C. Jyothi Selvapriya @ Selvapriya ...

Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 28/3/2023 passed in I.A.No.6 of 2022 in I.A.No.6 of 2022 in I.A.No.2 of 2021 in O.P.No.829 of 2018 on the file of the Hon'ble II Additional Principal Family Court, Chennai.

For Petitioner

...

Mr.G.Rajkumar

ORDER

This Civil Revision Petition is filed, aggrieved by the dismissal order, dated 28/3/2023, passed in I.A.No.6 of 2022 in I.A.No.2 of 2021 in O.P.No.829 of 2008 by the learned Second Additional Principal Family Court, Chennai.



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2. The facts in brief, as per the records are that the petitioner has filed H.M.O.P.No.829 of 2018, on the file of learned Second Additional Family Court, Chennai, seeking divorce from the first respondent. The first respondent has filed I.A.No.2 of 2021, seeking interim maintenance, under Section 24 of the Hindu Marriage Act. The first respondent has obtained Post-graduation in Master of Business Administration and working in M/s. Basiz Fund Services Pvt. Ltd., as a Senior Level Executive.

3. It is submitted that the first respondent has filed I.A.No.2 of 2021 seeking interim maintenance suppressing the fact that she has been working in M/s. Basiz Fund Services Pvt. Ltd. The petitioner has filed impugned I.A.No.6 of 2023, under Order XVI Rule 2 & 3 of the Code of Civil Procedure, 1908 r/w. Section 16, of the Family Courts Act, to depose the Head of the Human Resources Department of M/s. Basiz Fund Services Pvt. Ltd., in respect of employment of the first respondent. After full fledged trial, the same was dismissed and hence, the petitioner has come forward with the present Civil Revision Petition.

4. Heard Mr.G.Rajkumar, learned counsel for the petitioner.



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5. It is submitted by the learned counsel for the petitioner that the trial Court, ignoring the fact that evidence of Head of the Human Resources Department of M/s. Basiz Fund Services Pvt. Ltd., is essential, in order to prove that the first respondent is an employee of the said Company, dismissed the application. The petitioner stated to have produced screen shots of the first respondent's linked in profile, wherein, it is mentioned that the first respondent is working in M/s. Basiz Fund Services Pvt. Ltd. On the other hand, learned counsel for the respondents submitted that the screen shots filed by the petitioner would show that the first respondent working in M/s. Basiz Fund Services Pvt. Ltd., have been manipulated.

6. The petitioner has filed H.M.O.P.No.829 of 2018, seeking divorce. The respondent is entitled for interim maintenance, under Section 24 of the Hindu Marriage Act to meet the legal expenses. In order to grant maintenance in favour of the wife, condition precedent is that wife should not have been earning sufficiently that means, interim maintenance can also be granted even in case, the wife is working. However, it has to be made out before the Court that the earning of the wife is not sufficient to meet the legal expenses.



7. The petitioner being the husband has been asserting that the first respondent has been working as Senior Level Executive in M/s. Basiz Fund Services Pvt. Ltd. Therefore, in order to prove as to whether the first respondent is working in M/s. Basiz Fund Services Pvt. Ltd., concerned person from the Human Resources Department is required to be examined before the Court.

8. The trial Court has dismissed the application on the ground that the petitioner has filed his application belatedly. As rightly observed by the trial Court, the petitioner who has not raised objection initially for a considerable time has ultimately filed an application, on account of which, enormous delay had occurred in disposing of I.A.No.6 of 2023. Consequently, disposal of H.M.O.P.No.829 of 2018 got delayed. However, the question to be examined is whether on account of this technical reasons and lapses, on the part of the petitioner, the application filed by the petitioner to summon the witnesses can be declined. In order to prove that the respondent is an earning member, summons as sought for by the petitioner can certainly be granted. As already observed, since the petitioner has filed the application at a belated stage, costs can be imposed while allowing the Civil Revision Petition.



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WEB COPY 9. In the result, this **Civil Revision Petition is allowed** and the order, dated 28/3/2023, passed by the trial Court, in I.A.No.6 of 2022 in I.A.No.2 of 2021 in O.P.No.829 of 2018 is set aside. The trial Court is directed to issue summons to the Head of the Human Resource Department in M/s. Basiz Fund Services Pvt. Ltd., however on payment of costs of Rs.5,000/- (Rupees Five thousand only) to be paid by the petitioner to the first respondent.

No costs. Consequently, the connected Miscellaneous Petition is closed.

6/6/2023

Index :yes/no

Neutral Citation: Yes/No

mvs.

To

II Additional Principal Family Court, Chennai.

Dr.D.NAGARJUN,J



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