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C.R.P.No.131 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.131 of 2023
and CMP.No.1100 of 2023

P.Kabilan

... Petitioner

Vs

D.Kavya Kalpana

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and final order dated 06.10.2022 made in I.A.No.7 of 2022 in HMOP.No.956 of 2019 on the file of the Additional Principal Family Court, Coimbatore, insofar as it relates to the dismissal of the prayer for examination of further witnesses viz., Dr.Rathika and Astrologer Chandrasekaran is concerned.

For Petitioner : Mr.A.E.Ravichandran

For Respondent : Mr.Mani Bharathi
for Mr.M.Mariappan



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ORDER

This civil revision petition is at the instance of the husband, challenging the order dated 06.10.2022 passed in I.A.No.7 of 2022 in HMOP.No.956 of 2019 filed by him before Additional Principal Family Court, Coimbatore.

2. The revision petitioner/husband has filed a petition for divorce in HMOP.No.956 of 2019 on the file of Additional Principal Family Court at Coimbatore, alleging cruelty, non co-operation for cohabitation and other grounds. Pending the litigation, he has taken out an application in I.A.No.5 of 2021 seeking permission for further examination of himself and for examination of additional witnesses. The trial Court vide its order dated 19.11.2021 had denied permission to examine additional witnesses, however, granted permission to examine P.W.1, the petitioner. This was challenged by the petitioner in CRP.No.441 of 2022. This Court confirmed the order of the learned Additional Principal Judge vide its order dated 30.06.2022, and by virtue of the said order, liberty was granted to the petitioner to file an application for examination of further witnesses.



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3. In pursuance to the liberty granted to the petitioner vide order in CRP.No.441 of 2022, the petitioner filed I.A.No.7 of 2022 for examination of the following persons :

- a) The Manager, Nallus Amla Garden, Jungle View Cottages, No.9/236, Mavanalla, Masinagudi, The Nilgiris - 643 277;
- b) Dr.V.Rathika, M.B.B.S., D.G.O., Ranga Hospital, Velandipalayam, Coimbatore - 641 025;
- c) Mr.K.S.Chandrasekaran, residing at No.5/237, Kalappanaickenpalayam, Somayampalayam Post, Coimbatore - 641 108, the Astrologer.

The Trial Court after receipt of the counter from the respondent, allowed the application insofar as examination of the Manager is concerned, but dismissed the petition with respect to examination of doctor and astrologer.

4. Aggrieved by the said dismissal, the present revision is filed.

5. Heard Mr.A.E.Ravichandran, learned counsel for the petitioner and Mr.Mani Bharathi for the respondent.



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6.1 The history of the case would show that the petitioner's specific plea is that the respondent-wife did not co-operate for cohabitation during the time the petitioner and respondent are living together. Hence, a divorce petition. The respondent on her part has filed a counter making certain allegations. The petitioner, in order to prove that the allegations alleged by the respondent in her counter are false and untrue, he filed an application to examine further witnesses on his side namely (i) the Manager of Nallus Amala Garden, Nilgiris; (ii) Dr.Rathika, a doctor; and (iii) Mr.S.Chandrasekaran, an astrologer. That application was allowed in part, permitting the petitioner to examine the Manager alone, and dismissed his plea as against the examination of doctor and astrologer. Hence, the revision.

6.2 With respect to the examination of the Astrologer, I am not convinced with the reasons given by the petitioner. The petitioner always has ample time to cross-examine the respondent-wife. The statement said to have been made by the respondent to the astrologer would at best be a hear-say and therefore, no reliance can be placed on the same. I agree with the submission of the respondent counsel on this. Therefore, I am inclined to



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confirm the revision insofar as the dismissal of I.A.No.7 of 2022 with respect to examination of astrologer is concerned.

6.3 Insofar as the evidence of Gynaecologist is concerned. the respondent-wife has admitted that she had taken treatment from Dr.Rathika. Her evidence would be useful for the disposal of the case. Mr.Mani Bharathi would submit that though the respondent is alleged to have taken treatment from Dr.Rathika, her evidence must not be brought on record. She happens to be the very close friend of the civil revision petitioner and therefore, would be an interested witness. Whether the witness is an interested witness or disinterested witness, it can be gone only at the time of marshalling the evidence during final disposal. It is always open to the respondent to put such question as she deems fit for disclosing the purpose of nexus between the petitioner and the said doctor. That by itself cannot be a ground to prevent her from deposing any evidence. The said Gynaecologist having treated the respondent-wife, I feel her evidence would be necessary for the purpose of disposal of the case.

7. In the light of the above discussions, I.A.No.7 of 2022 in



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HMOP.No.956 of 2019 on the file of Additional Principal Family Court, Coimbatore, is allowed only to an extent of summoning of additional evidence namely Dr.V.Rathika, M.B.B.S., D.G.O., Ranga Hospital, Velandipalayam, Coimbatore - 641 025, and as concerning the summoning of Mr.K.S.Chandrasekaran, the Astrologer, it is dismissed.

8. To conclude, the civil revision petition is partly allowed, with a direction to the learned Additional Principal Judge, Family Court, Coimbatore to give priority to the case and dispose it as expeditiously as possible, since the matter is pending from 2019 onwards. No costs. Consequently, connected miscellaneous petition is closed.

03.06.2024

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

To:

1.The Judge
Additional Principal Family Court
Coimbatore.

2.The Section Officer
VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

ds

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