



C.R.P.No.2257 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2257 of 2024

and

C.M.P.No.11902 of 2024

Vishi Dharmarajan

... Petitioner

Vs

Swathi Subramanian

... Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the docket order, dated 08.04.2024 made in HMOP No.4636 of 2023 on the file of III Additional Family Court, Chennai whereby directed the petitioner herein and the respondent/husband in the divorce proceedings to appear in person and file the Power of Attorney along with petition.

For Petitioner : Mr.D.Ferdinand for

Mr.J.Pranav Reddy

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ORDER

The petitioner filed this Civil Revision Petition challenging the docket order dated 08.04.2024 made in HMOP.No.4636 of 2023 on the file of III Additional Family Court, Chennai.

2. The petitioner is the husband and the respondent is the wife. The respondent/wife filed a divorce petition in HMOP No.4636 of 2023. In that divorce petition, (a Power of Attorney Petition filed by the agent Mr.J.Sridharan,) on behalf of the petitioner/husband Mr.J.Sridharan Power of Attorney represented that the petitioner was unable to appear for the present and therefore, Mr.J.Sridharan may be permitted to appear and present all necessary documents signed by the petitioner/husband in HMOP.No.4636 of 2023. But the Trial Court not entertained the said Power of Attorney Petition and docket order passed in divorce Petition, which is as follows:-

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040824	Petitioner present. Respondent absent. Respondent/husband POA petition filed and returned. In view of the objections raised by petitioner/wife, respondent/husband is directed to appear in person. If not appeared suitable orders will be passed. Call on 16.05.2024.	051624
051624	Petitioner present. Respondent absent. Finally, time extended for appearance of Respondent and if not, suitable orders will be passed. Call on 11.06.2024	061124

Aggrieved over the same, the present Civil Revision Petition has been filed by the husband.

3.The learned counsel for the petitioner submitted that duly authenticated Power of Attorney produced by the petitioner which is certified by the Justice of Peace for New Zealand. In the Power of Attorney, the said Mr.J.Sridharan is authorised to appear and present all necessary documents, applications and affidavit in proceedings in HMOP.No.4636 of 2023, which is pending before the III Additional Family Court, Chennai and other applications in connection with the said proceedings. Further he submitted that the Trial Court ought to

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have taken into consideration, wherein the Hon'ble Supreme Court held that husband's personal appearance in family Court proceedings can be dispensed with, if he has appointed a valid power of attorney. Therefore, he prayed to set aside the docket order dated 08.04.2024 made in HMOP No.4636 of 2023.

4. Admittedly, it is seen that the petitioner and the respondent are husband and wife and there is a matrimonial discord between them and the respondent/wife had filed a divorce petition under Section 13(1)(ia) & 13(1)(ib) of the Hindu Marriage Act, 1955. Further it is an admitted fact that the respondent/wife is aware that the petitioner/husband is a permanent resident of New Zealand and even before filing of the divorce petition, the petitioner/husband sent a reply notice dated 24.08.2023 to the notice of the respondent/wife, in which this fact disclosed. The respondent for the reason best known, suppressing the same filed the divorce petition during October 2023.

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5. Therefore, it is admitted that the petitioner/husband is a permanent resident of New Zealand, settled there, executed Power of Attorney to Mr.J.Sridharan to appear and present all necessary documents, applications etc in respect of proceedings in HMOP No.4636 of 2023 and the said Power of Attorney notarized, and hence, the Trial Court not to have returned the Power of Attorney, just because objection made by the respondent/wife. It is common nowadays to get employment and to settle abroad, and also acquire citizenship of the country settled. In the present case, the petitioner/husband is a permanent resident of New Zealand and he has given a Power of Attorney to Mr.J.Sridharan to appear on his behalf in HMOP No.4636 of 2023, which is a matrimonial case. If such plea not entertained, petitioner/husband will be put to hardship. Further, this Court in C.M.A.No.2237 of 2007, held that a person can be permitted to be represented by a Power of Attorney, before the Family Court and it is not necessary that the individual should be physically present.

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6. In a similar situation, this Court, in the case of *Godwin Joseph Selvam vs. Monica @ C.Monika*, in CRP (PD) No.2493 of 2021, dated 24.11.2021 clearly held as follows:-

2. The return made by the learned Family Judge exposes ignorance of law as well as the wooden approach adopted by the learned Family Judge. The application seeking permission to represent the respondent in the proceedings before the Family Court filed by the Power of Attorney has been returned by the learned Family Judge on the ground that the original petitioner viz., the Principal was not physically present. This kind of return will erode the confidence of the litigant in the entire judiciary. No doubt, the Family Court Act requires the parties to be present. But the Family Court Act does not prevent the party from authorising another person to represent his case before this Court.

7. In view of the above, this Court directs the Trial Court to receive and accept the Power of Attorney filed on behalf of the

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petitioner. It is also seen that the petitioner filed petition under Section 13 of the Family Courts Act to permit him to represent the petitioner is also granted.

8.With the above directions, the Civil Revision Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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pbn
Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

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M.NIRMAL KUMAR,J.

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To

III Additional Family Court, Chennai

C.R.P.No.2257 of 2024

and

C.M.P.No.11775 of 2024

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