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C.R.P.(MD)No.2233 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 28/03/2024

Date of Pronounced : 16/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.2233 of 2023

and

CMP (MD) No.11440 of 2023

1.W.Kavitha

2.Minor R.Jovitha Little Mebel : Petitioners/Respondents/
Petitioners

Vs.

J.Ravisankar

: Respondent/Appellant/
Respondent

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the judgment, dated 21/04/2023 passed by the First Additional District and Sessions Judge, (PCR), Trichy in CrI.A No.21 of 2022 reversing the judgment, dated 30/11/2021 passed in DVC No.33 of 2017 on the file of the Judicial Magistrate, Additional Mahila Court, Trichy.

For Petitioners : Mr.T.Lenin Kumar

For Respondent : Mrs.T.Banumathi



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O R D E R

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This civil revision petition is filed seeking to set aside the judgment, dated 21/04/2023 passed by the First Additional District and Sessions Judge, (PCR), Trichy in Cr.A No.21 of 2022 reversing the judgment, dated 30/11/2021 passed in DVC No.33 of 2017 by the Judicial Magistrate, Additional Mahila Court, Trichy.

2.The facts in brief:-

DVC No.33 of 2017 was initiated by the petitioners herein seeking various reliefs. Several reliefs were granted in favour of the petitioners. Against which, appeal was preferred by the husband before the appellate authority namely the First Additional District and Sessions Judge, Trichy in Cr.A No.21 of 2022. By judgment, dated 21/04/2023, the matter was remitted back to the trial court directing the trial court to receive enclosures I and II as per the judgement of the Hon'ble Supreme Court in 2021(2) SCC 324 and fix the maintenance amount.

3.Aggrieved over the remand order, this civil revision petition is preferred.

4.Heard both sides.



5. We will straightaway go to the reasoning assigned by the appellate court for remand. The relevant portion runs like this:-

"7.3. Apart from that the appellant has to pay 25 sovereigns of gold jewels to the first respondent. So, it is very necessary to dismiss the criminal appeal filed by the appellant. In 2021(2)SCC 324, the Hon'ble Supreme Court of India has given the direction as "The Affidavit of Disclosure of Assets and Liabilities annexed as encloses I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrates Court, as the case may be, through the country" and contains a declaration and verification as follows:-

Declaration

1. I declare that I have made a full and accurate disclosure of my income expenditure, assets and liabilities from all sources. I further declare that I have no assets, income,



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expenditure and liabilities other than as stated in this affidavit.

2.I undertook to inform this court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.

3.I understand that any false statement in this affidavit, apart from being contempt of court, may also constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment upto seven years and fine, and Section 209 of Indian Penal Code punishable with imprisonment upto two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Indian Penal code, 1860."

6.The learned counsel appearing for the petitioners would submit that it is not necessary for that purpose to remit the matter. He would further rely upon the judgment of the Hon'ble Supreme Court reported in ***Sirajudheen Vs.***

Zeenath & others [2023(6)CTC 435] under what



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circumstance, the remand order can be passed. The Hon'ble Supreme Court has pointed out that cogent reasons must be recorded by the appellate court while exercising the power of remand. It is observed in para 9.3 as under:-

*"9.3.In the case of **Sanjay Kumar Singh** (supra) relied upon by the learned counsel for the respondent No. 1, this Court has observed as under:-*

"7.It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be



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adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

8.As observed and held by this Court in A. Andisamy Chettiar v. A. Subburaj Chettiar [(2015) 17 SCC 713], the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the



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appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."

7.Here, as mentioned above, both the parties failed to produce the enclosures I and II before the trial court. When there is violation of the Hon'ble Supreme Court guidelines, then automatically the order passed by the trial court may be improper.

8.No doubt that the appellate court itself can receive the Declaration Form namely enclosures I and II permitting the parties to lead evidence on that aspect. But the appellate court has exercised the power of remand. In view of the violation of the guidelines imposed by the Hon'ble Supreme Court, when there is violation of the guidelines, then automatically the power exercised by the appellate court, unless seems to be illegal, cannot be interfered at the revisional stage.



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9.I find that no ground is made out by the petitioners to reverse the order of the appellate court.

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10.In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

16/04/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The First Additional District and Sessions Judge, (PCR),
Trichy.
- 2.The Judicial Magistrate,
Additional Mahila Court,
Trichy.
- 3.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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