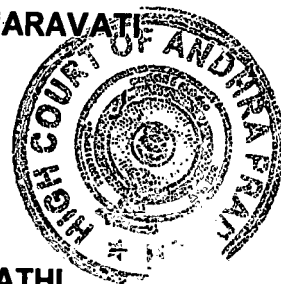


IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

FRIDAY, THE TWELFTH DAY OF MAY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI



CIVIL REVISION PETITION NO: 1338 OF 2023

Petition under Article 227 of the Constitution of India aggrieved by the order dated 01.04.2023 in I.A. No. 43/2023 in HMOP 27/2010 on the file of the Court of the Senior Civil Judge, Rajam, Srikakulam district.

Between:

Allena Siva Das, S/o Late Gopala Krishnarao Advocate, Hindu, aged 42 years, Sirlipothannavari Street Palakonda in Srikakulam District (Now Parvateepuram Manyam District)

...Petitioner

AND

1. Allena Nagaratnam @ Ramadevi, aged 40 years, W/o Allena Sivadas, D/o Palteru Late Surya Prakashrao Hindu, Household duties, Resident of Venkatapuram Village Gavarampeta Post in Chinna Merangi, SO in Jiyyammavalsa Mandal, Vizianagaram District (Now Parvateepuram Manyam District)- 535526
2. Marrapu Prasad,, S/o not known, aged 44 years, Employee Hindu, Resident of Venkatapuram Village, Gavarampeta Post Chinna Merangi, SO in Jiyyammavalsa Mandal, Vizianagaram District (Now Parvateepuram Manyam District)- 535526

...Respondents

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in HMOP 27/2010, on the file of the Honourable Senior Civil Judge, Rajam, pending disposal of the above CRP.

Counsel for the Petitioner: SRI. ARRABOLU SAI NAVEEN

Counsel for the Respondent Nos. 1 & 2: None appeared

The Court made the following Order:

THE HON'BLE MS JUSTICE B.S.BHANUMATHI**Civil Revision Petition No.1338 of 2023****ORDER:**

This revision petition is filed against the common order and decree dated 01.04.2023 allowing I.A.No.43/2023 in HMOP No.27/2010 on the file of the Court of the Senior Civil Judge Rajam, filed under Order XVIII, Rule 17 r/w Section 151 C.P.C. by the respondent No.1 in the divorce petition, seeking recall of herself to receive her additional chief affidavit for evidence in the main proceedings.

2. The parties are arraigned in the same manner as before the trial Court in the main proceedings.

3. The petitioner filed HMOP.No.27 of 2010 seeking divorce. During the course of the enquiry, the respondent No.1 filed the evidence in her chief-examination without describing the identity particulars of oath in form No.14 r/w Rule 39 of the Civil Rules of Practice, 1980. Without noticing the same, the cross-examination was started and the objection was raised. Thereafter, the petition in I.A.No.42 of 2023 and in I.A.No.43 of 2023 were filed to recall the respondent No.1 and to receive the additional chief affidavit. Though the petition was opposed, the trial Court allowed both petitions by observing that the affidavit of the 1st respondent without containing descriptive particulars viz., name, address etc., was accepted as

evidence and it was only then in the beginning of the cross-examination, the error was noticed. The trial Court observed that it is a typographical and bonafide mistake and can be rectified. It is further held that no prejudice would be caused by allowing the petitions.

4. Having aggrieved by the common order passed in I.A.Nos.42 of 2023 and 43 of 2023 in HMOP.No.27 of 2010, this Civil Revision Petition is filed alleging that the provision of Order XVIII Rule 17 CPC r/w Section 151 of CPC have not been followed by the trial Court and the petition cannot be allowed to fill the lacuna in the evidence already recorded.

5. Learned counsel for the petitioner advanced the arguments on the same lines. There is no quarrel in the submission made by the learned counsel for the petitioner that recalling of a witness under Order XVIII, Rule-18 C.P.C cannot be permitted for filling up lacunas. But, in the present case, under the peculiar circumstances, an incorrect form of affidavit in chief-examination without descriptive particulars of the deponent has been filed and taken in evidence and no cross-examination on the merits of the case has been conducted. The only cross-examination of the witness done is with regard to the lapse in the form of affidavit.

6. As per Order XVIII, Rule 4 C.P.C., in every case, the examination in chief of witness shall be an affidavit. But the form of

affidavit is not provided in C.P.C. Rule Nos.34 to 52 of Chapter-IV of Civil Rules of Practice, 1980 deal with affidavits.

- "34. Interpretation of words,*
- 35. Form,*
- 36. Description of deponent,*
- 37. Title of affidavits,*
- 38. Before whom may be sworn,*
- 39. Statement of Officer before whom affidavit is sworn,*
- 40. Interlineations, alteration, etc.,*
- 41. Deponent to be identified,*
- 42. Identification of a pardanashin woman deponent,*
- 43. Blind or illiterate deponent,*
- 44. Filing,*
- 45. Notice of filing,*
- 46. Affidavits not to be filed without proper endorsement,*
- 47. Description of the person or place,*
- 48. Affidavit on information and belief,*
- 49. Affidavit stating matter of opinion,*
- 50. Striking out scandalous matter,*
- 51. Documents referred to in affidavit,*
- 52. Cross examination on affidavit.*

Among them, the Rules most relevant to the discussion are the following:

35. Form: - Every affidavit shall be drawn up in the first person and divided into paragraphs numbered consecutively, and each paragraph as nearly as may be, shall be confined to a distinct portion of the subject.

Every affidavit shall be written or typed or printed and stitched book wise. The deponent shall sign at the foot of each page of the affidavit.

36. Description of deponent:- Every person making an affidavit shall subscribe his full name, the name of his father, his age, place of residence and his trade or occupation.

37. Title of affidavits:- Every affidavit shall be entitled as in the suit or matter in which it is filed but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant, respectively and that there are other plaintiffs or defendants as the case may be.

39. Statement of Officer before whom affidavit is sworn:- The officer before whom an affidavit is sworn or affirmed shall state the date on which, and the place where, the same is sworn or affirmed and sign his name and description at the end

as in Form No.14; otherwise the same shall not be filed or read in any matter without the leave of the Court.

41. Deponent to be identified:- Every person making an affidavit for use in the Court shall if not personally known to the person before whom the affidavit is made, be identified by someone known to him, and the person before whom the affidavit is made shall state at the foot of the affidavits, the name, address, and description of the person by whom the identification was made.

FORM NO. 14

Rule 39- Affidavit of Solemn Affirmation

(Cause-title)

1. *I, Madura Ramaswamy Pillai, son of A.B. and a Hindu [.....] ofyears of age land- owner residing at..... do solemnly and sincerely affirm [or make oath and say] as follows:*

1.

2.

Solemnly affirmed [or sworn].....at the office of [the Court of the District Munsif of this day of]

(signed G.H.)

(signed)

Deputy Nazir of the said Court.

Madura Ramaswamy Pillai

Before me.

Note: The word "of the caste" omitted by RO.C.No.1464-60 PBI published in A.P.Gazette Rules Supplement to Part II dated 05-01-1961.

7. The above rules are procedural in nature. It is settled law that procedure is a handmaid of justice. In the present case, the affidavit was not in proper form, but was like a counter. It is a procedural lapse and the respondent No.1 is not at fault. In the present case, the descriptive particulars of the deponent as required under Rule 36 R/w form No.14 have not been provided. No substantive right of the petitioner in the *lis* is defeated, if affidavit in proper form is permitted to be filed subsequent to pointing out to the lapse.

8. Therefore, allowing the petitioner to file an affidavit in proper form and for that purpose recalling the witness, since the evidence is shown to be closed, is not an error. In any case, a Civil Court has

inherent power to pass orders appropriate to meet the ends of Justice. In this case, since in practical terms, no evidence in cross-examination was recorded, allowing the petitioner to file a fresh affidavit in the proper form cannot be termed as the filling up of the lacuna after cross-examination. As such this Court does not find any illegality in the order. Thereby, the present Civil Revision Petition has no merit.

7. Accordingly, this Civil Revision Petition is dismissed. No costs.

Pending miscellaneous applications, if any shall stand closed.

//TRUE COPY//

Sd/- M PRABHAKAR RAO
ASSISTANT REGISTRAR

[Signature] SECTION OFFICER.

To,

1. The Senior civil Judge, Rajam, Srikakulam District.
2. One CC to Sri. Arrabolu Sai Naveen, Advocate [OPUC]
3. Three CD Copies

vna

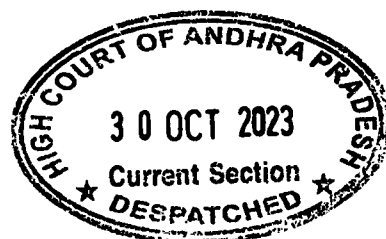
Bhargava

HIGH COURT

DATED:12/05/2023

ORDER

CRP.No.1338 of 2023



DISMISSING THE CRP

5- Copies

PBK

26/10/2023