

**S.Deepak. Vs. D.AnithA.**

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**Court :** Chennai

**Decided On :** Aug-26-2010

**Judge :** M.Jaichandren, J.

**Acts :** Code of Civil Procedure (CPC) - Order 47 Rule 1 and 2,114

**Appeal No. :** Review Application Nos.108, 109 and 110 of 2010

**Appellant :** S.Deepak.

**Respondent :** D.AnithA.

**Advocate for Def. :** Mr.M.Palanivel, Adv.

**Advocate for Pet/Ap. :** Mr.S.Deepak, Adv.

**Judgement :**

1.The Review petition, in Review Petition No.108 of 2010, has been filed against the order, dated 20.4.2010, made by this Court, in Tr.C.M.P.No.422 of 2009. The said petition, in Tr.C.M.P.No.422 of 2009, had been filed seeking to withdraw M.C.No.35 of 2007, filed for maintenance, on the file of the Family Court, Salem, and to transfer the same to the Family Court at Chennai..

2. The Review petition, in Review Petition No.109 of 2010, has been filed against the order, dated 20.4.2010, made by this Court, in Tr.C.M.P.No.423 of 2009. The said petition, in Tr.C.M.P.No.423 of 2009 had been filed seeking to withdraw G.O.P.No.1 of 2008, on the file of the Family Court, Salem, and to transfer the

same to the Family Court at Chennai.

3. The Review petition, in Review Petition No.110 of 2010, has been filed against the order, dated 20.4.2010, made by this Court, in Tr.C.M.P.No.424 of 2009. The said Tr.C.M.P.No.424 of 2009 had been filed seeking to withdraw F.C.O.P.No.131 of 2007, on the file of the Family Court, Salem, and to transfer the same to the Family Court at Chennai.

4. This Court, by a common order, dated 20.4.2010, had allowed the transfer civil miscellaneous petitions. Paragraph 13 of the said order reads as follows:

"13. It is not in dispute that both the petitioner and the respondent are, at present, living at Chennai. In view of the difficulties expressed by the petitioner, in her affidavits filed in support of her petitions, in attending the hearings before the family Court, at Salem, in the matters pending before it and as it has been stated that the petitioner has no independent income and that she is living with her aged father, at Chennai, along with her minor female child, this Court finds it appropriate to allow the above Transfer Civil Miscellaneous Petitions, by withdrawing M.C.No.35 of 2007, G.O.P.No.1 of 2008 and F.C.O.P.No.131 of 2007, pending on the file of the Family Court, Salem and transferring the same to the Principal Family Court, at Chennai. After transferring and renumbering, the Principal Family Court, Chennai, is directed to hear and dispose of the cases, on merits and in accordance with law, within six months thereafter. The Transfer Miscellaneous Petitions are allowed accordingly. No costs. Consequently, connected M.P.Nos.1,1 and 1 of 2009 are closed.

5. The main grievance of the review petitioner in the above review petitions is that the respondent, D.Anitha, had committed perjury, with mala fide intentions. He had also submitted that the respondent had suppressed material documents and thereby, had committed fraud on the Court. Further, she had come before this Court, with unclean hands. She had also mislead this Court by suppressing and misrepresenting the facts. As such, the order passed by this Court, on 20.4.2010, is null and void. The petitioner, who had appeared as party-in-person, before this Court, had also submitted that the claim of the respondent that she has no independent source of income is false and misleading.

6. Further, the allegation made by the respondent, in the transfer civil miscellaneous petitions, stating that the petitioner herein is impotent, is totally false. Similarly, the petitioner in the transfer civil miscellaneous petitions had also made various other baseless allegations against the present petitioner. As such, the respondent is liable for perjury. The petitioner had also submitted that the respondent would be legally liable for making such defamatory statements. He had also relied on the decision of the Supreme Court, made in Hamza Haji v. State of Kerala and another (AIR 2006 SC 3028) in support of the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eye of law and that it can be challenged in any Court, even in collateral proceedings, in any Court.

7. In the counter affidavit filed by the respondent, the averments and allegations made by the petitioner had been denied. It had been stated that the petitioner had filed the present review petitions only with the mala fide intention of prolonging the proceedings before the Family Court at Chennai. The learned counsel appearing on behalf of the respondent had also submitted that the review petitions are devoid of merits and therefore, they are liable to be dismissed, with exemplary costs.

8. In view of the grounds raised by the petitioner in the review petitions and in view of the averments made in the counter affidavits filed on behalf of the respondent, and in view of the submissions made by the petitioner, as well as the learned counsel for the respondent, this Court is of the considered view that the petitioner has not shown sufficient cause or reason for allowing the review petitions. No grounds have been made out to set aside the order passed by this Court, on 20.4.2010, in Tr.C.M.P.Nos. 422, 423 and 424 of 2009.

9. The main reason for allowing the transfer civil miscellaneous petitions have been clearly stated in the order passed by this Court, on 20.4.2010. It is also noted that this Court had directed the Principal Family Court, Chennai, to hear and dispose of the cases, on merits and in accordance with law, within six months after the transferring and renumbering of the cases. It is also noted that the matters have been listed before the Family Court, Chennai, on 28.8.2010, for further hearing. In such circumstances, this Court does not find sufficient grounds to

review the order passed by this Court, on 20.4.2010, in Tr.C.M.P.Nos.422, 423 and 424 of 2009. Therefore, the review petitions stand dismissed. No costs. However, it is made clear that it would be open to the petitioner in the review petitions to meet all the allegations made by the respondent herein, before the Principal Family Court, Chennai, in the matters pending before the said Court, in the manner known to law. It is also made clear that the Principal Family Court, Chennai, is expected to comply with the directions issued by this Court, in its order, dated 20.4.2010, made in Tr.C.M.P.Nos.422, 423 and 424 of 2009.

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