

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY 2015

BEFORE

THE HON'BLE MR. JUSTICE A S BOPANNA

WRIT PETITION Nos.27818-27819/2015 (GM-FC)

BETWEEN:

SRI. M.M. SRIKANTH
S/O M.N. MAHADEVAPPA
AGED ABOUT 37 YEARS
No.3480, 15TH CROSS
SRIKANTAPURI EXTENSION
NANJANGUD - 571301

...PETITIONER

(BY SRI. GOPALA GOWDA, H.K., ADV.,)

AND:

SMT. INDRANAI
W/O M.M. SRIKANTH
AGED ABOUT 34 YEARS
D/O C. MAHADEVIAH
L.I.G. 88, PANCHAMANTRA ROAD
KUVEMPUNAGAR
MYSORE – 570023.

... RESPONDENT

(BY SRI. M.R. NANJUNDA GOWDA, ADV.,)

THESE WRIT PETITIONS ARE FILED UNDER
ARTICLES 226 AND 227 OF THE CONSTITUTION OF

INDIA, PRAYING TO QUASH THE ORDERS DTD:10.6.2015 PASSED ON I.A.No.12 & 13 IN M.C. No.948/2010 BY THE LEARNED FAMILY COURT JUDGE AT BANGALORE VIDE ANNEX-G AND ETC.,

THESE WRIT PETITIONS COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING :

ORDER

The petitioner is before this Court assailing the order dated 10.06.2015 passed on I.A.Nos.12 and 13 in M.C.No.948/2010.

2. The petitioner who is husband of the respondent had in the proceeding pending in M.C.No.948/2010 at an earlier instance filed an application for issue of summons to permit him to examine Dr. M.C. Srinivas, Spandana Clinic, Rajajinagar, Bangalore as his witness. The Court below after taking note of the application had allowed the said application and summons was ordered. The petitioner despite the same did not pay the process fee and did not obtain summons for securing the witness. In that view, the Court below had

proceeded further by closing the evidence and posting the case for arguments. Subsequently, at that stage, the petitioner filed the instant application seeking recall of the order and to permit the petitioner to examine the witness who had been permitted by the earlier order, which has been rejected. The petitioner claiming to be aggrieved by the same is before this Court.

3. Though on taking note of the manner in which the petitioner had not utilised the opportunity the Court below would have been justified in a normal circumstances, keeping in view the fact that the rival contentions in any event would have to be proved and in that light, since at the first instance, the Court below had permitted the petitioner to examine the witness, it would be appropriate that a conditional order on terms be passed and an opportunity be granted to the petitioner so as to meet the ends of justice.

4. In that light, the order impugned dated 10.06.2015 is set aside. The applications are allowed. The Court below shall now fix a specific date to enable the petitioner to examine the witness who had been permitted earlier. Prior to the said date, the petitioner shall pay process and obtain summons to secure the presence of the witness. If the petitioner does not utilize the said opportunity, the opportunity granted shall stand forfeited and the petitioner shall not be allowed to make any grievance in this regard. Further, the petitioner shall also pay cost of Rs.2,500/- to the learned counsel for respondent before the Court below on the next date of hearing.

In terms of the above, these petitions stand disposed of.

**Sd/-
JUDGE**

PMR