

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

OP (FC).No. 287 of 2015 (R)

AGAINST THE ORDER IN OP 557/2014 of FAMILY COURT, MALAPPURAM DATED
17-04-2015

PETITIONER/PETITIONER:

ANILAN, AGED 44 YEARS,
S/O.RAMAN, KAVUMPURTH HOUSE, CHERUKA POST,
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT - 679 340.

BY ADV. SRI.U.K.DEVIDAS

RESPONDENT/RESPONDENT:

JAYASUDHA, AGED 32 YEARS,
D/O.JAYARAJAN, POONGOTTIL HOUSE, PATHAIKKARA POST,
PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT REPRESENTED BY JAYARAJAN.P.
POONGOTTIL HOUSE, PAITHAIKKARA POST - 679 322.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE MEMORANDUM OF ORIGINAL PETITION IN OP NO.557/2014.

EXT.P2: TRUE COPY OF THE IA NO.281/2014 FOR A DIRECTION TO THE RESPONDENT TO APPEAR BEFORE THE MEDICAL BOARD.

EXT.P3: TRUE COPY OF THE IA NO.1199/2014 FOR APPOINT THE FATHER OF THE RESPONDENT AS GUARDIAN.

EXT.P4: TRUE COPY OF THE ORDER DATED 17/4/2015 IN IA NO.281/2014.

EXT.P5: TRUE COPY OF THE ORDER DATED 17/4/2015 IN OP NO.557/2014.

EXT.P6: TRUE COPY OF THE JUDGMENT DATED 23/8/2013 IN MAT. APPEAL NO.990/2009.

EXT.P7: TRUE COPY OF THE MEMORANDUM OF ORIGINAL PETITION IN OP NO.593/2014.

RESPONDENT'S EXHIBITS:NIL

/TRUE COPY/

P.S. TO JUDGE

C.K.ABDUL REHIM & K. RAMAKRISHNAN, JJ.

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O.P.(FC)No.287 of 2015
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Dated this the 1st day of July, 2015.

JUDGMENT

Ramakrishnan, J:

This original petition is filed by the petitioner in OP.No.557/2014 on the file of the Family Court, Malappuram challenging the orders passed in I.A.Nos.281/2014 and 1199/2014 filed by the petitioner invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner and the respondent are husband and wife. Their marriage was solemnized on 11.4.1999 and they have got two children in that wedlock aged 15 and 12 years respectively. The respondent is suffering from 'Obsessive Compulsive Disorder' and undergoing treatment for the same. Now they are living separately. The petitioner has produced certain documents showing the entire treatment of the respondent. Since the respondent could not lead a marital life on account of her mental illness, the petitioner filed Ext.P1 - OP.No.557/2014 for

dissolution of the marriage under Section 13(1) (ia) (ib) (iii) of the Hindu Marriage Act read with Section 7(1)(a) of the Family Court Act and along with that, he had produced certain documents showing treatment as well. He filed IA.No.1199/2014 for appointment of a guardian for the respondent on the ground that she is mentally ill person unable to conduct the case by herself under Order XXXII Rule 2 of the Code of Civil Procedure. On the basis of the notice issued, the respondent appeared and the court below conducted enquiry and recorded her statement and formed an opinion that she can stand trial and there is no necessity to appoint a guardian and that petition was dismissed. He filed I.A.No.281/2014 under Section 151 of the Code of Civil Procedure to direct the respondent to appear before a Medical Board with Psychiatrist as a member to evaluate the present mental condition of the respondent herein. Though both these applications were heard together, the court below dismissed I.A.No1199/2014 vide Ext.P5 order and I.A.No.281/2014 was relegated to the evidence stage by Ext.P4 order. These two orders are being challenged by the petitioner by filing the above petition.

3. Considering the scope of enquiry, this Court felt that

the petition can be disposed of at the admission stage itself.

4. Counsel for the petitioner vehemently argued relying on Ext.P6 judgment of this Court in another case that the court below should not have dismissed I.A.No.1199/2014 but should have allowed I.A.No.281/2014 and only after getting mental assessment order by the Medical Board and orders should have been passed by the court below. However, the court below had posted the case for evidence and insisted for taking evidence without giving opportunity to the petitioner to adduce evidence regarding the mental condition of the respondent and if the case is disposed of, he will be put to hardship as the ground taken for divorce is mental illness of the respondent.

5. We have gone through the order passed by the court below. For the purpose of appointing a guardian under Order XXXII Rule 15 of the Code of Civil Procedure, the court below need to only conduct an enquiry to assess the mental condition of the respondent as to she is capable for prosecuting the case by herself and only if the court is satisfied that she is incapable of doing the same, then only further evaluation of the mental condition of the respondent has to be evaluated by

getting expert medical evidence. In this case, it is seen from Ext.P5 order that court below had conducted an enquiry as contemplated under Order XXXII Rule 15 of the Code of Civil Procedure by examining the respondent, recalling her statement and satisfied that she is capable for conducting the case by herself and there is no necessity to appoint a guardian and rightly dismissed that application. So there is no necessity to interfere with that order now by invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

6. As regards the other application, I.A.No.281/2014, is concerned, the court below had not closed the application. It is only relegated to the evidence stage. Whenever the evidence starts in the case and the petitioner produces document to show the treatment given to the respondent regarding her mental illness and asks for time, the court below is directed to give an opportunity to the petitioner to adduce evidence in that regard and after that consider and dispose of I.A.No.281/2014 on merit before disposing the main original petition for dissolution of marriage. Sufficient opportunity has to be given to the petitioner to adduce evidence to substantiate

the case by issuing summons to the the witnesses including the doctors, who have said to have treated the respondent for her alleged mental illness, and also to consider whether ground of dissolution of marriage on the ground of mental illness has been made out or not.

The court below is directed to defer the evidence in the matter for a period of one week, so that the petitioner can produce the order of this Court for consideration by the court below in the matter.

With the above directions and observations, this petition is disposed of.

Communicate a copy of this judgment to the concerned court at the earliest.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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