

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

OP (FC).No. 317 of 2015 (R)

PETITIONER(S)/PETITIONER/ PETITIONER:

FRANCIS XAVIER, AGED 34 YEARS,
S/O. C.J. BARRID, CHAKKALCKAL HOUSE, WEST CHULLICKAL,
KOCHI 682 005.

BY ADVS.SRI.C.M.NAZAR
SRI.MANSOOR.B.H.
SRI.SHAJI P.MATHEW

RESPONDENT(S) :

JISHA JOY, AGED 30 YEARS,
D/O. P.V. JOY, PREKKATTIL HOUSE, KHANNA NAGAR P.O.,
KORATTY, THRISSUR, PIN-680 309.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP (FC) .No. 317 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

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EXHIBIT P1: A TRUE COPY OF OP NO.866/2011 FILED BY THE PETITIONER AND IS PENDING BEFORE THE HON'BLE FAMILY COURT ERNAKULAM.

EXHIBIT P2: A TRUE COPY OF IA NO 16/2012 IN OP NO.866/2011 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, ERNAKULAM.

EXHIBIT P3: A TRUE COPY OF THE LETTER DATED 18.7.2013 SENT BY THE PETITIONERS COUNSEL.

EXHIBIT P4: THE LETTER DATED 23.7.2013 SENT BY THE RESPONDENTS COUNSEL.

EXHIBIT P5: A TRUE COPY OF THE LETTER DATED 20.8.2013 ISSUED BY THE COUNSEL FOR THE PETITIONER TO THE RESPONDENT.

EXHIBIT P6: A TRUE COPY OF COMMON ORDER IN IA NOS.3202/2013 AND 3203/2013 IN IA NO.16/2012 IN OP NO.866/2011.

EXHIBIT P7: A TRUE COPY OF THE IA NO 2785/2014 IN IA NO.16/2012 IN OP NO.866/2011.

EXHIBIT P8: CERTIFIED COPY OF ORDER IN IA NO.2785/2014 IN OP 866/2011 DATED 13.2.2015.

EXHIBIT P9: CERTIFIED COPY OF THE ORDER DATED 13.2.2015 DIRECTING MEDICAL SUPERINTENDENT/MANAGER OF ST. JAMES HOSPITAL TO PRODUCE THE TREATMENT DETAILS OF THE RESPONDENT.

EXHIBIT P10: A COPY OF THE LETTER SENT BY THE DIRECTOR, ST. JAMES HOSPITAL, CHALAKKUDY.

RESPONDENT(S) ' EXHIBITS

: NIL

//True Copy//

P.A. to Judge

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

O.P.(F.C)No.317 of 2015

Dated this the 23rd day of July, 2015

JUDGMENT

K. Ramakrishnan, J

This original petition is filed by the petitioner challenging the order in I.A.No.2785/2014 in O.P.No.866/2011 of the Family Court, Ernakulam under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner has filed O.P.No.866/2011 before the Family Court, Ernakulam for declaration of marriage between the petitioner and the respondent was null and void, as the respondent was suffering from mental ailment and she could not give valid consent for the marriage, even at the time when the marriage was solemnized and that fact was suppressed. The petitioner filed I.A.No.16/2012 for psychiatric counselling as Ext.P2 and as per order dated 24.06.2013, learned Family Court Judge directed both the

parties to undergo psychiatric counselling before Dr.C.J. John, Clinical Psychologist, Medical Trust Hospital, Ernakulam. Though Ext.P3 and P4 intimations were given to the respondent to appear before the clinical psychologist for counselling, she did not appear. Thereafter respondent filed I.A.No.3202/2013 before the Family Court for reviewing the order in I.A.No.16/2012 with a delay condonation application and the learned Family Court, Judge dismissed those applications as per Ext.P6 order. Thereafter the petitioner filed I.A.No.2785/2014 for directing the parties to appear before the Clinical psychologist to undergo psychiatric counselling and get a report by the expert and that petition was also dismissed by the Family Court as per Ext.P8 Order. This order is being challenged by the petitioner by filing this writ petition.

3. Considering the scope of enquiry, this court felt that, the petition can be disposed of at the admission stage itself after hearing the counsel for the petitioner alone and dispensed with notice to the respondent.

4. The counsel for the petitioner submitted that, having allowed the application for psychiatric counselling and directed the parties to appear before the clinical psychologist for that purpose, court below was not justified in dismissing the application to implement that order by Ext.P8 order. Further steps have been taken by the petitioner to summon the documents from the hospital from where she had undergone treatment by getting Ext.P9 order and Ext.P10 letter was sent by the hospital authorities stating that they are not having the case sheets with them. Though they have admitted in the letter that, she was consulted in that hospital between 06.04.2006 and 27.09.2007. So unless they have been directed for psychiatric counseling, he may not be able to prove his case.

5. It is an admitted fact that the petitioner filed Ext.P1 petition for a declaration that the marriage solemnized between the petitioner and the respondent is to be declared as null and void, on the ground that respondent

was suffering from mental illness even at the time when the marriage was conducted and she was not in a position to give consent and that fact was suppressed by the parents of the respondent. It is true that as per earlier order, the family court has allowed the application for counselling by a clinical psychologist and the application to review the order filed by the respondent was dismissed by the family court as per Ext.P4 order. It is also an admitted fact that when the petitioner filed a petition to implement order and direct the respondent to appear before the clinical psychologist, that was dismissed by the family court by the impugned Ext.P8 order which is under challenge now.

6. As per the Family Court Rules, psychiatric counseling or clinical psychologist's counseling is provided only to find out as to whether there is any possibility of reunion between the parties and if there is any possibility of correction which may lead to reunion, those attempts will have to be completed before going for trial. Further even as per the Family Court Rules, the report of the

psychologist's evaluation during counselling should not be used as evidence for the purpose of trial. So under the circumstances, the order passed by the court below by Ext.P8 that, there is no necessity for a psychiatric counselling at that stage is perfectly justifiable. Further the right of the petitioner to adduce evidence on the question of mental status of the respondent has not been curtailed by this order as well.

So under the circumstances, we do not think that it is necessary to interfere with Ext.P8 order passed by the court below, dismissing the application for directing the parties to undergo clinical psychiatric counselling as claimed in that petition. If the petitioner wants to adduce evidence on the mental status of the respondent at the time of marriage or at the time of filing the application or during the pendency of the proceedings, he is at liberty to move the Family Court for the purpose of evaluating mental status by referring respondent for a psychiatric evaluation either by a psychiatrist or by a Medical Board constituted

for that purpose and if such an application is filed, it is for that court to consider and pass appropriate orders in that application. Further if the petitioner wants to summon certain documents from James Hospital, Chalakudy, to prove that between 06.04.2006 and 27.09.2007, the respondent was consulted in that hospital and an application is filed for that purpose, court below is at liberty to consider and pass appropriate orders in that application, even giving liberty for the petitioner to summon the doctor who examined her at that time to prove the case of the petitioner.

With the above direction and observation, the petition is dismissed.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge