

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12389 OF 2015

Sunil Maruti Dhaj.] ... Petitioner

Versus

Sunita @ Savita Sunil Dhaj.] ... Respondent

Mr. Bhushan Walimbe for Petitioner.

CORAM :- M. S. SONAK, J.

DATE :- JANUARY 22, 2016

P. C. :-

1. The challenge in this petition is to the order dated 29/09/2015 by which the Trial Court has declined to refer the respondent to a qualified doctor or a psychiatrist for the purposes of examining her mental condition.

2. Mr. Walimbe, learned Counsel for petitioner-husband, submitted that in this case, the petitioner has applied for divorce on the ground that the respondent is afflicted by mental illness. In this case, the doctor who had issued a medical certificate in relation to respondent's mental condition has expired in the year 2013 or thereabout. The petitioner reasonably expects that the respondent would examine herself in these proceedings and thereby the condition

of her mental illness would be evident. Now that the respondent has chosen not to examine herself, suitable directions are liable to be issued for referring the respondent to a qualified doctor or a psychiatrist in order to determine her mental condition. Mr. Walimbe has placed reliance upon the decision in the case of *Sharda Vs. Dharmpal*¹. He submitted that in a matter of this nature, the Family Court, ought to have adopted a conciliatory role and referred the respondent for examination to a doctor or a psychiatrist, so that the truth would be out. For all these reasons, Mr. Walimbe submitted that the impugned order is liable to be set aside and the petitioner's application, granted.

3. After hearing Mr. Walimbe, learned Counsel for petitioner, perusing the record as well as the impugned order, this is not a case where any interference is warranted. In this case, the petitioner has obviously taken his chance. The petitioner, in the course of his evidence, not only examined himself and his family members, but also examined certain experts and produced medical evidence in the context of his claim that the respondent is afflicted by mental illness. Mr. Walimbe's contention that the petitioner became aware only in June 2015, after closure of his evidence, that psychiatrist who had issued medical certificate has already expired in the year 2013, cannot be accepted. There is absolutely no explanation as to why, if at all, no efforts were made to examine the said doctor, whilst, the evidence of the petitioner was going on. The petitioner has, in this case,

¹ 2003(3) ALL MR 331 (S.C.)

voluntarily closed his evidence. Merely because the respondent has chosen not to examine herself, the petitioner cannot insist upon referring her to a psychiatrist for determining her mental condition. The petitioner is always at liberty to make good his case on the basis of evidence led by him and for which, he was offered ample opportunity. The petitioner obviously has chosen to take his chances in the matter.

4. At no stage, did the petitioner urge that the Family Court to adopt any conciliatory role in the matter. This does not mean that the Court, in its own accord, should not attempt any conciliation between the parties. However, the plea of the petitioner at this stage, cannot be accepted. In the case of ***Sharda*** (*supra*), the Hon'ble Apex Court has merely held that in divorce proceedings, the matrimonial court has the power to order a person to undergo a medical test, either *suo motu* or at the instance of such party. However, such power is required to be exercised only if there is *prima-facie* case and sufficient material before the Court. Besides, in the same judgment, the Hon'ble Apex Court has ruled that refusal to submit to medical examination, may, in a given case, entitle the opposite party to urge that adverse inference to be drawn. All these are matters which will no doubt be take into consideration by the Court. However, there is no jurisdictional error in the making of the impugned order.

5. For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

6. However, it is made clear that the observations made in the impugned order or for that matter, the observations made in the present order, are only *prima-facie* and for the purposes of issue at hand. Therefore, at the stage of final disposal of the petition, the Trial Court need not be influenced by the same. All contentions of all parties are therefore kept open.

(M. S. SONAK, J.)