

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1028 of 2016

and

C.M.P.No.5754 of 2016

S.Jayakanth

... Petitioner

vs

N.Chethna

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to allow the above C.R.P. and set aside the fair and decretal order passed in I.A.No.646 of 2010 in O.P.No.1031 of 2008 dated 2.9.2015 by the Principal Family Court, Coimbatore.

For Petitioner: Ms.Geeta Ramaseshan

ORDER

The husband is the petitioner and the wife is the respondent.

2. Husband filed the petition for divorce on the ground of cruelty and unsoundness of mind. While filing the O.P for divorce, he has not chosen to file an application for appointment of a guardian and the respondent/wife was also not shown as a person with unsound mind represented by another person. Having chosen to file such a

petition, after two years, he filed an interlocutory application for appointing the father of the respondent as her guardian on the premise that she was incapable of defending herself.

3. The application was resisted by the respondent/wife contending that she is not suffering from unsoundness of mind and she herself can defend the case. After hearing both sides, based on the medical reports produced on both sides, the learned trial Judge came to the conclusion that no guardian at that stage need be appointed, as the respondent herein / wife was found to be sane and fit to contest the case herself. The said order is challenged in the present Civil Revision Petition.

4. Learned counsel for the petitioner submits that the petitioner is not much aggrieved by the result of the petition, but he apprehends that the petitioner's prayer for divorce on the ground of unsoundness of mind will be affected by the decision made in the Interlocutory Application. Be that as it may, to take a decision as to whether she is to be represented by a guardian, a decision regarding mental condition of the respondent the respondent is absolutely necessary and that is what the trial Court has done.

5. Even then, in view of the apprehension expressed by the petitioner that this finding may be projected as a finding eliminating the ground of unsoundness of mind for seeking divorce, this Court feels that the Civil Revision Petition can be disposed of, directing the Court below to keep open the issue in the main H.M.O.P and decide the same on the basis of evidence to be adduced therein without being influenced by any of the observations of the trial Court made in the order in the interlocutory application.

6. Accordingly, the Civil Revision Petition is disposed of, directing the trial Court to keep open the issue as to mental condition of the respondent, to be decided in the main H.M.O.P untrammelled and uninfluenced by any of the observations made in the order of the trial Court dated 02.09.2015 made in I.A.No.646 of 2010. No costs. Consequently, the connected miscellaneous petition is closed.

31.03.2016

Index: Yes/No
Internet: yes/No

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P.R.SHIVAKUMAR.J

To

The Principal Family Court,
Coimbatore

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