



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.653 of 2016 (PD)
and
C.M.P. (MD) .3026 of 2016

V.Srinivasan

.. Petitioner

Vs.

S.Nagajothi

.. Respondent

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 11.01.2016, passed in I.A.No.77 of 2015 in H.M.O.P.No.514 of 2014, on the file of the III-Additional Sub Court, Madurai.

For Petitioners : Mr.J.Jeyakumaran

ORDER

This memorandum of Civil Revision Petition has been filed for setting aside the order, dated 11.01.2016, passed in I.A.No.77 of 2015 in H.M.O.P.No.514 of 2014, on the file of the III-Additional Sub Court, Madurai.

2. The petitioner is the husband and the respondent is the wife. The petitioner filed H.M.O.P.No.514 of 2014 against the respondent on the ground of cruelty. He filed I.A.No.77 of 2015 for subjecting the respondent to medical examination. According to the petitioner, the respondent is not physically and mentally capable of having sexual relationship with the petitioner. The respondent denied this allegation. The learned Judge considering the fact that the petitioner did not plead that the respondent is not capable of having sexual relationship with the petitioner, dismissed the application. Against the order of dismissal this Civil Revision Petition has been filed

3. The learned counsel for the petitioner submitted that the learned Judge erred in holding that the petitioner did not plead physical and mental inability of the respondent to have sexual relationship with the petitioner. The learned counsel for the respondent further submitted that the petitioner has pleaded the inability of the respondent in paragraph No.5 of the petition



in H.M.O.P.No.514 of 2014. The learned Judge ought to have seen that from the date of marriage, the respondent is not interested in having sexual relationship with the petitioner.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. I have gone through the petition in H.M.O.P.No.514 of 2014 filed by the petitioner. In paragraph No.5 or anywhere else in the petition, the petitioner has not stated that the respondent is mentally and physically incapable of having sexual relationship with the petitioner. On the other hand, he has stated that she married the petitioner only due to the compulsion of her parents. The petitioner has not filed H.M.O.P.No.514 of 2014 on the ground that the marriage was not consummated, but the ground on which the petitioner is seeking divorce is only cruelty. The learned Judge considered all these aspects and dismissed the application.

6. The learned counsel for the petitioner relied on the judgement in **Lalit Kishore vs. Meeru Sharma and another** reported in **2009(9)SCC433** whereas in paragraph Nos. 2 & 3 it has been held as follows;

"2.In our view, the High Court as well as the Family Court was not justified in rejecting the application for medical examination of the respondent wife. It is difficult to conceive that the Family Court cannot be conferred with the jurisdiction to pass an order for medical examination in an appropriate case because when such report is received, that would facilitate the court in giving a positive conclusion on the mental condition of the respondent wife.

3. It is true that the Hindu Marriage Act, 1955 or any other law governing the field does not contain any express provision empowering the court to issue direction upon a party in a matrimonial proceeding to compel him to submit herself/himself to a medical examination. But, in our view, it does not preclude the court from passing such an order. The court is always empowered to satisfy itself as to whether a party before it suffers from mental illness or not, either for the purpose of taking evidence on the ground for which the matrimonial proceedings was started."

7. Without pleading, a party cannot let in evidence and therefore the judgment relied on by the learned counsel for the petitioner is not applicable to the case on hand. In the circumstances, the order of the learned Judge does not warrant any



interference by this Court. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)

WEB COPY

/True copy/

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

PJL

To

The III-Additional Subordinate Judge, Madurai.

RG.JGB-DP/SAR-I 07.04.2016 3P/2C

C.R.P (MD) No.653 of 2016 (PD)
and
C.M.P. (MD) .3026 of 2016
24.03.2016