

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No. 4675 OF 2016

ORDER:

1. The revision petitioner is the husband, who filed F.C.O.P. No.85 of 2014, for dissolution of the marriage, under Sections 12(1)(a) and 2(b)(i) of the Hindu Marriage Act, 1955 (for short, 'the Act'), on the file of the Court of Judge, Family Court at Vizianagaram (for short, 'the lower Court').

2. The petitioner herein has also filed Interlocutory Application No.348 of 2016 in F.C.O.P. No.85 of 2014, under Section 151 of C.P.C., seeking to send the respondent-wife for medical examination. The ground on which he sought for medical examination was that his marriage with the respondent was not consummated due to her vaginal problem and, hence, the marriage could not be consummated. The said Interlocutory Application was dismissed by the lower Court on the ground that the petitioner has got examined two doctors on his behalf as PWs.2 and 3 besides his evidence. Being aggrieved by the said order, this Civil Revision Petition is preferred by the petitioner-husband.

3. Heard Mr. P. Durga Prasad, learned counsel for the petitioner, and Mr. G. Sundaresan, learned counsel for the respondent.

4. Learned counsel for the petitioner submits that since the marriage of the petitioner with the respondent has not been consummated due to the vaginal problem of the respondent, permission is required to get her examined by a doctor. It is further

submitted that the two doctors examined on behalf of the petitioner as PWs.2 and 3 have given only oral evidence without examining the respondent. Therefore, the petitioner seeks permission to send the respondent for medical examination to a competent doctor to find out whether she has got any vaginal problem, which incapacitated her for leading conjugal life.

5. Learned counsel for the respondent opposed for granting any permission for sending the respondent to medical examination on the ground that the petitioner has already examined two doctors in that regard and they have given information on that aspect, on the same ground the trial Court also dismissed the Interlocutory Application.

6. The point that arises for consideration in this matter is, whether there are sufficient grounds to direct the respondent to undergo medical examination, as sought for?

7. The main contention of learned counsel for the petitioner is that the marriage has not been consummated and, therefore, he has filed the Petition under Sections 12(1)(a) and 2(b)(i) of the Act for dissolution of their marriage. The petitioner alleges that only due to the vaginal problem of the respondent, the marriage could not be consummated and, therefore, he filed the Application for sending the respondent for medical examination. The trial Court placing reliance on the aspect that two doctors have already examined as PWs.2 and 3, refused to give permission to send the respondent for medical examination.

8. Learned counsel for the petitioner further submits that examination of the respondent is essential to prove that she has got vaginal problem and that is why the marriage could not be consummated. In view of the facts and circumstances of the case, the respondent cannot be compelled to undergo medical examination against her wish. However, in view of the facts and circumstances of this case, if the respondent is willing, she can undergo the medical examination to prove her *bona-fides* but she cannot be compelled to undergo examination against her wish. In that case, the petitioner has to prove his case basing on the other evidence available on record.

9. Accordingly, with the above observation, the Civil Revision Petition is disposed of. No order as to costs.

10. In consequence, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand disposed of as infructuous.

G. SHYAM PRASAD, J

Date: 11.11.2016.
TJMR

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