

HONOURABLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No. 5089 OF 2015

DATED 26TH FEBRUARY, 2016

BETWEEN

Sri T.Surya Saltish Goud

...Petitioner

And

Smt. T,. @P.Dharanija and ors

....Respondents.

HONOURABLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5089 OF 2015

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India is directed against the order dated 14.09.2015 passed by the learned Judge, Family Court, Secunderabad in I.A.No.509 of 2015 in I.A.No.54 of 2015 in FCOP.No.220 of 2012.

2. I have heard the learned Counsel for the petitioner-husband and learned Counsel for the 1st respondent-wife. Respondents 2 to 4 are stated to be not necessary parties. I have perused the material record.

3. In a matrimonial original petition filed by the husband against the wife for dissolution of marriage and grant of decree of divorce on the ground of cruelty, the husband filed the subject interlocutory application in I.A.No.509 of 2015 under

Order XI Rule 14 read with Section 151 of Code of Civil Procedure requesting the trial Court to direct the Resident Medical Officer, Yashoda Hospital, Secunderabad to produce into the Court in a sealed cover the entire medical record of the respondent-wife relating to her admission on 19.7.2015 with I.P.No.276858 in Room No. 553 including the admission form and discharge summary. In support of the said request, the case of the petitioner/husband is that in the Original Petition [OP] filed by the husband against wife, the wife had taken a specific plea that one K.Srinivas with whom the husband attributed extra marital relationship is a necessary party; therefore, an application was already filed by the husband for the impleadment of K.Srinivas and others as necessary parties to the said original petition; that the husband came to know that the wife was admitted in Yashoda Hospital, Secunderabad on 19.07.2015; that the said K. Srinivas filled the admission form by mentioning that wife of the petitioner, that is, the 1st respondent herein is his wife; that in the capacity of husband, K.Srinivas had admitted her into the hospital; that the petitioner-husband had also come to know that in the said hospital record, that is, in the admission form the said K. Srinivas had given his permanent and temporary address apart from mentioning his personal details and mobile number; that despite the request made by the petitioner-husband to furnish the copies of the said medical record, the hospital authorities had declined to give the same; therefore, the husband had filed the present application before the family Court requesting to summon the entire medical record from the said hospital to prove and establish the case pleaded by him in the OP.

4. The said application filed by the husband was resisted by the wife *inter alia* contending that she was admitted into the hospital on 19.07.2015 at 22.59 hours in semi conscious state as she was suffering with acute diarrhea; that she was discharged from the hospital on 21.07.2015 at 17.05 hours; that at the time of admission into the hospital, she was accompanied by her mother; that the other allegations in the affidavit of the husband are false; that the discharge card issued by the hospital authorities would disclose that her name is shown as T.Dharanija; that the affidavit filed in support of the application of the husband lacks material details; that one of the Advocates of the petitioner-husband was present in the hospital at the relevant point of time; and that he was spotted by her mother; and that on the information that he might have given, the petitioner husband seems to have manipulated the hospital records in connivance with the staff of the hospital; and that the truth would come out if the CC TV footage of the hospital is called for and the server of the hospital is directed to be examined by an expert; and that, therefore, the respondent-wife is taking steps for filing applications to summon CC TV footage of the hospital and also for a direction for examination of the server of the hospital by an expert in the filed of Information Technology.

5. At the hearing before the trial Court, no documents were exhibited. On merits, the trial Court had dismissed the petition *inter alia* holding that the original petition for divorce was filed on the ground of cruelty; and that it is alleged in the original petition that the wife is receiving support from K.Srinivas; that in the absence of any allegation of adultery in the original petition,

the summoning of record from the hospital on the ground that it would help the petitioner-husband to substantiate the ground of adultery against the wife is meaningless; and that the information at the time of admission of the wife into the hospital was admittedly not given by the wife personally at the hospital; and that if the information was given by K.Srinivas, he would not have given his details, address and mobile number knowing fully well that the petitioner-husband is an advocate; and that the information, which is entered in the hospital record, is not sufficient to prove the adultery; and that the same is not relevant to decide the issue involved in the *lis*.

6. Aggrieved of the said orders, the husband had filed the present revision petition *inter alia* urging that the trial Court had failed to properly take note of the specific pleading of adultery on the part of the respondent-wife with K.Srinivas as urged in the original petition; and that merely because the prayer to dissolve the marriage on the ground of adultery is not made, it does not mean that the Court can refuse to grant the decree of divorce on the ground of cruelty for adulterous behaviour; that the observations in the impugned order even without summoning any part of the record and even without looking into the same are imaginary and unsustainable; that the prayer in the main petition can also be amended by the petitioner at any time on the basis of subsequent events; and that the prayer in the original petition is not at all relevant for deciding the subject interlocutory application filed for summoning the hospital record; and that the learned Judge of the Court below did not properly understand the core of the dispute between the parties and also the purpose for which the hospital record was requested to be

summoned.

7. It is needless to mention that the learned Counsel for the parties advanced arguments based on the respective pleadings.

8. Before going into the merits of the case, it is necessary to mention that wife as stated in the counter filed by her in the subject interlocutory application under consideration had already filed two applications with the prayers viz., (i) for appointment of an expert in the field of Information Technology to inspect, in relation to the relevant period, the server of Yashoda Hospital, Secunderabad; and, (ii) to direct the concerned officer of the Yashoda Hospital, Secunderabad to furnish the copy of the CC TV video footage of the relevant period from the CCTV at the reception/admission counter. Both the said applications were allowed by the Court below as the counsel for the petitioner-husband had reported no objection.

9. In this back drop of factual milieu, be it noted that in view of the specific stand taken by the wife in her counter filed in the original petition that the said K.Srinivas is a necessary party to the OP, an application was filed by the petitioner-husband for impleading the said K. Srinivas and others by categorically stating various averments besides asserting the averments made in the OP to the effect that he came to know that the wife is moving around and staying with Sri Kuthadi Srinivas @ Erikala Srinivas since April, 2011. Further, it is pointed out that the case of the petitioner-husband is that his wife is staying with the said K.Srinivas; that K.Srinivas is supporting the respondent-wife by giving his house and also partnership in his business of cold storage; and that he had presented her a car

and a ring on her birthday; and that all the circumstances show that there is adulterous relationship between the respondent-wife and the said K.Srinivas; and that the respondent-wife had withdrawn permanently from the company of the petitioner-husband; and that it is stated in the OP that the respondent-wife has been moving around and staying with the said Srinivas; and that the petitioner had learnt in the month of May 2012 from the gynecologist by name Dr. Nirmala Rao, who treated the respondent-wife, that the respondent-wife has got inserted a copper-T in her body in April, 2011; that he came to know of the same when he visited the doctor in connection with the miscarriage of the respondent-wife; and that the said aspect of insertion of Copper-T would clearly expose the intention of the respondent-wife to live with said Srinivas and have co-habitation with him, after leaving the company of the petitioner-husband. Apart from the above allegations in the OP, which were brought to the notice of this Court at the time of hearing, it is also further pointed out by the learned counsel for the petitioner-husband that as the respondent-wife is moving and staying with K.Srinivas, the petitioner-husband had made the necessary averments in the OP in regard there to and that the said averments make out a clear case of mental harassment/cruelty; that the wife had taken a plea in her counter filed in the original petition that the said K.Srinivas is a necessary party even though adultery is not specifically made one of the grounds for the grant of divorce would show that the wife understood the purport of the averments in the original petition; and that the conduct of the wife in moving and staying with the said K.Srinivas coupled with the conduct of the said K.Srinivas in openly stating that the respondent is his wife, are sufficient

evidence to establish the allegations of mental cruelty in the original petition; and that, therefore, in the facts and circumstances of the case, the trial Court ought to have summoned the record from the hospital is the submission of the learned Counsel for the petitioner.

10. On the other hand, the learned Counsel for the 1st respondent-wife would submit that a reading of the provisions of law under which the OP was filed and the cause of action alleged in the original petition do not support the case of adultery being now put forward by the petitioner-husband; and that adultery is not one of the grounds urged for seeking divorce; and that admittedly in the original petition, K.Srinivas is not impleaded as a party; and hence, there is no reason, much less valid reason, to summon the record from the hospital; and that the Trial Court was right in observing that the information entered in the hospital record, which is being sought to be summoned by the petitioner- husband, will not prove adultery; and that the said record being sought to be relied upon by the petitioner-husband is not relevant to the issue to be adjudicated in the original petition.

11. I have given anxious consideration to the facts of the case and the respective contentions of the learned Counsel.

12. There is no dispute with regard to the relationship of husband and wife between the petitioner and the respondent and also in regard to the fact that there is estrangement between the spouses and that they are living separately since long time i.e. from April, 2011 onwards. One of the grounds, which the

petitioner had admittedly urged in the OP filed for granting divorce is cruelty on the part of the respondent-wife. In the OP, while making a reference to the aspect of the wife moving with K. Srinivas and the support she is receiving from K.Srinivas and her stay with him, it is further stated that respondent-wife has got inserted a Copper-T in her body in April 2011 and that the said aspect exposes her intention to live with the said Srinivas and have co-habitation with him after leaving the Company of the husband. Placing reliance on the said and other averments made in the OP it is further urged that the said allegations are sufficient to state that adultery is also urged as a ground in the original petition. Whether or not adultery was urged as one of the grounds for granting divorce, is a matter to be gone into by the trial Court at an appropriate stage. Nonetheless, the case of the petitioner is that the medical record if summoned from the hospital would establish the ground of mental cruelty, which is one of the vital grounds urged in the OP for grant of divorce. Be that as it may, the Court below, even before the medical record from the Hospital is summoned and brought on record, had allowed the applications filed by the wife for appointment of an expert in the field of Information Technology to inspect the Server of the Yashoda Hospital, Secunderabad and further directed the said Hospital authorities to furnish to the wife the CC TV video footage of the CCTV at reception/admission counter of the Yashoda Hospital. The proposed evidence, i.e., the medical record of the wife is being sought to be summoned from the Yasoda Hospital by the petitioner-husband in order to prove the cruelty and mental harassment on the part of the respondent-wife. Even before summoning the medical record of the wife from the hospital as sought for by the husband, the

applications filed by the wife are allowed giving an opportunity to the respondent-wife to disprove the evidence, which the husband proposes to adduce based on such medical record, which is not even before the Trial Court. Thus, the trial Court has already permitted the wife to secure evidence in order to disprove the case of husband based on medical record, even before the necessary permission is accorded to the husband to summon the medical record from the hospital. The Court below had allowed the applications of the wife obviously to enable her prove that the medical record sought to be summoned from the hospital is manipulated by the husband with the connivance of the hospital authorities. This fact itself is a substantial ground for allowing the subject application of the husband. Further the trial Court erred in not allowing the application filed by the petitioner-husband for summoning the medical record, by observing that the said proposed evidence is not going to help the husband to prove his case and that the proposed evidence is not relevant. Thus the Court below erred in evaluating the evidence, which is not even placed on Court record and also in recording untimely findings. Therefore, the order of the trial court dismissing the subject interlocutory petition on the grounds that the information entered in the hospital records is not a proof of adultery and is not relevant etcetera calls for interference in this civil revision petition filed under Article 227 of the Constitution of India. In the well considered view of this Court, the evidence in the form of medical record, if summoned from the hospital, might be of some help to the husband to establish his pleaded case in regard to mental cruelty; and, in any view of the matter, in the light of the stands taken by the

husband and the wife, the said evidence eventually may be of some importance either to the wife or the husband and may ultimately be essential for effective adjudication of the *lis*. Viewed thus, this Court finds that there is acceptable merit in the contentions of the husband and therefore, his request to summon the documents/records from the hospital deserves to be considered favourably to meet the ends of justice.

13. Accordingly the Civil Revision Petition is allowed and Order dated 14.09.2015 is set aside. Consequently I.A. No. 509 of 2015 in I.A.No. 54 of 2015 in FCOP No. 220 of 2012 stands allowed.

Miscellaneous petitions pending consideration if any in the Civil Revision Petition shall stand closed in consequence. No order as to costs.

JUSTICE M.SEETHARAMA MURTI

DATED 26th February, 2016.
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