

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CIVIL REVISION PETITION No.2310 of 2015

ORDER:

This civil revision petition is filed against the order dated 20.03.2015 in I.A.No.640/2014 in O.P.No.514/2013 on the file of the Judge, Family Court-cum-IV Additional District & Sessions Judge, Vijayawada.

The petitioner herein originally filed O.P.No.514 of 2013 on the file of the Judge, Family Court, Hyderabad for annulment of his marriage performed on 12.02.2012 with respondent No.1 on the ground that she was suffering from mental illness and persistent thyroid which facts were suppressed by respondents Nos.2 and 3. Subsequently, respondent No.1 filed Transfer CMP.No.293/2012 before this Court and the OP came to be transferred to the Court below. The petitioner filed I.A.No.640/2014 under order VI Rule-17 CPC to incorporate the following pleadings in his original petition:

“Additional para No.III(18): It is an established medical fact that mental illness is inheritable also in most cases, and in this case it subsequently came to light that the elder sister of the 1st respondent namely Neelaveni is also suffering from acute mental illness and she is unmarried on account of her mental condition and therefore, the petitioner *bona fide* apprehends that if, by any remote chance, the 1st respondent conceives a child, the said child also might probably inherit the said mental illness from the mother (1st respondent herein).

Additional para No.III (19): It is further submitted that instead of disclosing the precise mental illness which, the 1st respondent is suffering from, the 2nd and 3rd respondents have virtually taken away the 1st respondent from the matrimonial home of the petitioner at Hyderabad on 22.02.2012 to Vijayawada and since the said date even till today, the 1st respondent continues to reside with her parents at Vijayawada after having deserted the petitioner herein.

Additional para No.III (20): It is submitted that during the pendency of the subject O.P, the 1st respondent herein gave SMS to the petitioner herein from Vijayawada on 30.09.2013 by threatening to commit suicide, and the petitioner being terrified, immediately issued a telegram dated 30.09.2013 from Hyderabad to the 2nd and 3rd respondents

herein at Vijayawada by alerting them regarding the suicide threat of the 1st respondent and a certified copy of the said Telegram is herewith filed.

Additional para No.III (21): Furthermore, during the pendency of Transfer C.M>P.No.293/2012, the respondents lodged a false complaint of dowry harassment, bad behaviour and dowry demands etc., vide F.I.R.No.3/2013 on the file of the Women's P.S., Cyberabad by making absolutely false and baseless allegations against the petitioner and his parents, and so also, the Respondents have made absolutely false and reckless allegations of dowry demands etc., against petitioner herein without any regard for the truth and without any evidentiary basis."

It is contended on behalf of the petitioner that the subsequent events give him a right for obtaining the decree of divorce on the additional grounds of desertion and mental cruelty.

The 1st respondent resisted the petition, contending that the proposed amendments are intended to fill up the lacunas and the petitioner is trying to cover up those laches by the proposed amendments.

The contention of the learned counsel for the petitioner is that he came to know the subsequent events which took place and which entitle him to seek a decree of divorce on the additional grounds of mental cruelty and desertion, and therefore, the petitioner may be permitted to amend the petition. He further contends that the Court below has erroneously dismissed the application and hence the revision.

Heard both sides and perused the material on record.

The proposed amendment which is sought to be made by the petitioner/husband is with respect to the events that took place subsequent to the filing of the OP for annulling the marriage on the ground of mental illness of respondent No.1/wife, which fact is said to have been suppressed by respondent Nos.2 and 3. The learned counsel appearing for the petitioner/husband relied upon a decision of the

Supreme Court in *Dr.(Mrs.) Malathi Ravi, M.D. v. Dr.B.V.Ravi, M.D*¹,

wherein the Apex Court in paragraph Nos.20 & 23 observed as under:

“20. The seminal question that has to be addressed is whether under these circumstances the decree for divorce granted by the High Court should be interfered with. We must immediately state that the High Court has referred to certain grounds stated in the memorandum of appeal and taken note of certain subsequent facts. We accept the submission of the learned Counsel for the Appellant that the grounds stated in the memorandum of appeal which were not established by way of evidence could not have been pressed into service or taken aid of. But, it needs no special emphasis to state that the subsequent conduct of the wife can be taken into consideration. It settled in law that subsequent facts under certain circumstances can be taken into consideration.

23.Regard being had to the said submission, we are constrained to pose the question whether in a case of the present nature we should require the Respondent-husband to amend the petition and direct the learned Family Judge to consider the issue of mental cruelty or we should ignore the fetter of technicality and consider the pleadings and evidence brought on record as well as the subsequent facts which are incontrovertible so that the lis is put to rest.....”

The legal proposition that is relied on by the learned counsel for the petitioner is not disputed. In matrimonial disputes, the events that took place subsequent to the filing of the petition can also be looked into to determine as to whether the party seeking relief is entitled to or not. By the proposed amendments, the petitioner/husband wants to place on record certain facts which could not be raised at the time when the OP was filed. Even without there being amendment, such contention can be raised by him which the court can take note of. However, the petitioner wants to place on record before the evidence is commenced, and in the interests of justice, the amendments can be allowed, so that the respondents can also meet the said allegations by way of their pleadings. Therefore, rejection of the request of the petitioner/husband to amend the petition by the Court below cannot be sustained.

¹ AIR 2014 Supreme Court 2881

In the result, the civil revision petition is allowed. I.A.No.640/2014 filed by the petitioner before the court below is allowed permitting the petitioner to amend the pleadings and prayer portion in OP, as prayed for. The respondents are at liberty to file additional counter, if any, in the main O.P., if they are so advised.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAI SWAL,J

Date: 16.12.2016
Dsr

