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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAT.APP.(F.C.) 142/2015 & CM Nos. 29066-69/2015

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Date of decision : 6th May, 2016

ALPANA GUPTA

..... Appellant

Through: Mr. Aditya Ranjan,
Adv.with appellant

versus

PRANAB GUPTA

..... Respondent

Through: Mr. A.K. Mishra, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

Gita Mittal, J

1. For the purposes of the present appeal, it is not necessary to dwell on the facts of the case in detail. We are briefly noting just the bare essentials which are necessary for the purposes of this adjudication.
2. The parties to the present appeal were married on 7th April, 2011. The appellant has complained that she noticed abnormal behavior of the respondent after the marriage and received ill treatment from the side of the respondent.
3. As per the appellant, her relatives made inquiries and learnt that the respondent was suffering from a mental disorder treated by

several psychologists including Dr. Ratnani much prior to the marriage and that whenever he stopped taking medication, his abnormal behavior became apparent. On 21st April, 2011, the appellant's father and brother found out from the respondent's family members that the respondent was suffering from mental disease and was taking treatment from Dr. Devendra Ratnani of Durg. Looking to the gravity of this situation, the appellant was brought back to her parents' house at Raigarh on 22nd April, 2011. The respondent continued treatment with Dr. Pramod Gupta for his mental illness.

4. The appellant has also placed reliance on telephonic conversations of her brother with the respondent's father. Transcriptions thereof as well as other records have been filed as evidence and proof on record. The appellant has also relied on an e-mail dated 28th April, 2011 by the respondent's sister wherein she had mentioned that the respondent was under treatment of a doctor at Bhilai much prior to the marriage.

5. On the allegation that the respondent was suffering from mental illness i.e. schizophrenia and he was impotent, on 25th August, 2011, the appellant filed a petition under Section 12 of the Hindu Marriage Act, 1956 seeking annulment of the marriage of the parties.

6. So far as the respondent is concerned, he examined only himself as a witness. Our attention is also drawn to the respondent's cross examination on 31st July, 2014 wherein the respondent had inter alia stated thus :

“I want that this litigation should end and I should get divorce..... Being in depression I am not getting job since last three years.... ***I was diagnosed with the problem of schizophrenia by Dr. Pramod Gupta which Mark-D. I am taking the medicine prescribed by the doctor Pramod Gupta regularly till now....*** I do not know why my father said why I was not taking medicine prescribed by Dr. Devendra Ratnani regularly. I cannot say that who is the best doctor amongst the doctors whom I have consulted. I do not know when I will be fully cured and become normal.”

(Emphasis by us)

7. Our attention is also drawn to a medical prescription dated 22nd April, 2011 issued by Dr. Pramod Gupta which states that he is a mental disease specialist at the Rajnandgaon – United Nursing Home, Chhattisgarh which was admitted by the respondent. It appears that the appellant had examined herself and her brother Alok Gupta and her father as witness on her behalf.

8. The appellant has placed heavy reliance on the above admissions of the respondent. However, after consideration of the matter, the learned trial court had concluded that the father and brother of the appellant had failed to disclose the date, month or year when they learnt about the mental illness of the respondent. So far as the illness itself is concerned, we extract hereunder the observations and the findings of the family court in the impugned order:-

“Besides PW-1 herself has claimed to be noticing the mental illness of the respondent about 5/6 days after the marriage. The learned counsel for

petitioner has tried to place reliance on the transcript of the conversation between PW-2 Sh. Alok Gupta and respondent's father Sh. S.C. Gupta but I find that even during said communication there is reference by PW-2 Sh. Alok Gupta meeting some Dr. Pranit and asking for medical reports/medication of the respondent. In one of the conversation, the father of the respondent even asked him whether he wants to meet Dr. Ratnani but PW-2 answered in negative and told him that he had met Dr. Pranit at Rohini Sector-6 Delhi who is a famous psychiatrist. However, neither the said Dr. Pranit nor Dr. Ratnani nor Dr. Pramod Gupta has been got examined or summoned by the petitioner to establish that the respondent suffers from any mental disorder or illness or schizophrenia which incorporates him from making physical relations or the deposition of petitioner and her witnesses does not inspire confidence. In the absence of any cogent medical evidence, it cannot be held that the respondent has been suffering from any mental disorder/schizophrenia."

9. It is submitted by learned counsel for the appellant before us in view of the admissions by the respondent in his statement on oath, the appellant was advised that she had been able to establish her case and therefore, had not examined the other medical evidence in support of her petition.

10. In fact, before the Family Court, the appellant had filed an application under Section 75 of the CPC praying for medical examination of the respondent by a panel of doctors regarding his mental disorder. In the reply filed before the family court, the respondent had admitted that he was suffering from a mental

disorder and was being treated for the same. This application and reply were taken on record on 6th January, 2014. It appears that no orders have been passed on this application seeking medical examination of the respondent.

11. In this appeal, the appellant has filed CM No.29066/2015 under Section 75 read with Order XXVI Rule 10 A of the CPC for medical examination of the respondent before us as well. There is no challenge either to the jurisdiction of this court to direct the medical examination or the prayer therein.

12. The appellant also presses that the respondent be submitted to medical examination as prayed before the trial court. In support of the prayer for medical examination, our attention is drawn to the pronouncement of the Supreme Court reported at **2003 4 SCC 493** *Sharda v Dharampal* wherein the Supreme Court had stated thus :-

52. Even otherwise the court may issue an appropriate direction so as to satisfy itself as to whether apart from treatment he requires adequate protection inter alia by way of legal aid so that he may not be subject to an unjust order because of his incapacity. Keeping in view of the fact that in a case of mental illness the court has adequate power to examine the party or get him examined by a qualified doctor, we are of the opinion that in an appropriate case the court may take recourse to such a procedure even at the instance of the party to the lis.

53. Furthermore, the court must be held to have the requisite power even under Section 151 of the Code of Civil Procedure to issue such direction either suo motu or otherwise which, according to him, would lead to the truth.”

13. It cannot therefore, be disputed that this court as the appellate court has the power to direct that the respondent shall submit to a medical examination by a competent expert.

14. We may note that the factum that the respondent is suffering from mental disease is not disputed before us even today. However, dispute is raised with regard to the fact as to whether the respondent was suffering from the disease prior to the marriage.

15. The appellant has filed CM No. 29067/2015 praying that the appellant may be permitted to examine Dr. Devender Ratnani and Dr. Pramod Gupta in support of her case. In view of the circumstances noted by us heretofore, certainly their evidence is critical to decide the real issues.

16. It also cannot be denied that given the admissions of the respondent as well as the statements made by the relatives of the respondent with regard to his sickness, interests of justice merit that in order to do complete justice between the parties, the appellant is permitted to lead the evidence to examine such medical experts who were treating the respondent.

17. On a consideration of the entirety of the matter, we direct as follows :-

- (i) The judgment dated 31st August, 2015 passed by the Family Court dismissing HMA No. 650/2011 is hereby set aside and quashed and HMA No. 650/2011 is restored to its original position.

- (ii) The appellant is permitted to summon Dr. Devender Ratnani and Dr. Pramod Gupta in accordance with law before the Family Court.
- (iii) The parties shall appear before the Family Court on 16th May, 2016 for appropriate orders regarding the summoning of these two witnesses.
- (iv) Given the fact that the petition was filed in the year 2011, the trial court shall ensure that the proceedings are completed, in any case, within a period of six months from the date the matter is taken up again.
- (v) The respondent shall appear before the Medical Superintendent, Institute of Human Behaviour and Applied Sciences, Dilshad Garden, Jhilmil Colony, New Delhi-110095 (hereinafter referred to as 'IHBAS') on 18th May, 2016 with all medical reports, prescriptions and test reports from the inception of his treatment. The Medical Superintendent shall form a team of experts to medically examine the respondent.
- (vi) The Medical Board shall be at liberty to examine the respondent as well as to conduct any appropriate test(s) as may be deemed necessary and submit a report with regard to his mental health and condition, upon an independent assessment of all relevant material.
- (vii) Copy of the prescription dated 22nd April, 2011 shall also be forwarded by the Registry to IHBAS.

- (viii) The report of the Medical Board shall be forwarded by the Director of IHBAS directly to the Principal Judge (South-West District), Family Court, Dwarka, Delhi who shall place the same in HMA No. 650/2011 entitled Smt. Alpana Gupta v. Sh. Pranab Gupta.
- (ix) It shall be open for the parties to have the report of the Medical Board proved on record in accordance with law.
- (x) The respondent shall ensure that the amount of maintenance fixed @ ₹5,000/- is transferred by the RTGS mode to the Saving Bank A/c No.630801545727 maintained by the appellant in the ICICI Bank, Secunderabad Branch on or before 7th day of each English calendar month. The maintenance for the month of May, 2016 shall be paid by this mode before 15th May, 2016.
- (xi) Arrears shall be paid in four monthly equated instalments alongwith the current maintenance.

This appeal is allowed in the above terms.

GITA MITTAL, J

I.S.MEHTA, J

MAY 06, 2016/kr