

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7471 OF 2016**

Shailendra Singh Bhadauria

..Petitioner

Vs.

Renuka Shailendra Bhadauria

..Respondent

Mr. Tarun K. Sinha for the Petitioner

Mr. S. S. Bhise for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 16th JANUARY, 2017

P.C.

1 The order dated 28-3-2016 passed by the Learned Civil Judge Senior Division, Thane, ruling that the Petition filed by the Respondent herein is maintainable, is taken exception to by way of the above Petition.

2 The Petitioner herein and the Respondent are husband and wife. They were married in the year 2000 and lived together till the year 2010. The Respondent wife has filed Marriage Petition No.201 of 2014 in the court of the Learned Civil Judge Senior Division, Thane seeking divorce under Section 13(1)(iii) of the Hindu Marriage Act, 1955. It is the case of the Respondent both she and the Petitioner are suffering from schizophrenia and that though the Respondent is taking the treatment regularly and diligently, the Petitioner is for the reasons best known to him not doing so. The said averment is found in paragraph 4 of the Marriage Petition. The said Marriage Petition has been

filed in the year 2014. The Petitioner husband filed Exhibit 12 questioning the maintainability of the Marriage Petition on the ground that the Respondent being of unsound mind is not entitled to prosecution of the Marriage Petition on the touchstone of Order 32 of Civil Procedure Code and Section 147 and Section 20 of the Hindu Marriage Act. In view of the said application Exhibit 12 filed by the Petitioner husband, the Learned Civil Judge Senior Division, Thane framed the following preliminary issue :

“whether the present Petition is maintainable ?

It seems that the Petitioner to buttress his case as set out in the said application Exhibit 12 produced a C.D. called as “public lecture and panel speaking” as conducted by A.I.I.M.S. Delhi in respect of case of schizophrenia. The Petitioner who is the Respondent in the said Marriage Petition also relied upon the judgment of the Apex Court reported in the matter of Ram Narain Gupta Vs. Smt. Rameshwar Gupta¹

3 In so far as the Respondent wife is concerned, she led evidence of one Dr Joshi who has stated in her evidence that the Respondent wife is not having any clinical symptoms, so her diagnosis was schizophrenia in remission. The word remission in medical terms can be described as “patient with no acute or active clinical symptoms of any psychiatric disorder.” She has further stated in her evidence that as per her diagnosis, the Petitioner i.e. the Respondent herein is in normal state of mind.

¹ AIR 1988 SCR 2060

4 The Learned Civil Judge Senior Division observed from the evidence of Dr. Joshi that it is clear that the Respondent was under the treatment of Dr. Rakesh Ghildiyal, from April 2010 for mental disorder. In so far as the reliance placed on behalf of the Petitioner to the averments in paragraph 4 of the Marriage Petition are concerned, the Learned Judge observed that the Petitioner has placed only a part reliance on the averments when it is the case of the Respondent that both she and her husband i.e. the Petitioner herein are patients of schizophrenia. The Learned Judge rejected the submission based on Order 32 of the CPC on the ground that the evidence of Dr. Joshi makes it clear about the mental condition of the Petitioner i.e. the Respondent herein. The Learned Judge observed that it cannot be lost sight of that both the Petitioner and the Respondent resided with each other till the year 2010 and therefore the contention urged on behalf of the Petitioner herein that the wife is a patient of mental disorder, is devoid of any merit. The Learned Judge lastly observed that the allegation made about the Respondent is yet to be proved. The question of mental disorder of the Respondent requires ample evidence and this can be adjudicated during the trial. Hence the Learned Judge has kept the said issue open for being adjudicated at the trial after the parties led evidence.

5 In my view, having regard to the material on record, the finding

recorded by the Learned Civil Judge Senior Division, Thane whilst adjudicating upon the preliminary issue that the Marriage Petition is maintainable, cannot be found fault with. The order does not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]