

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE N. BALAYOGI**

FAMILY COURT APPEAL No.246 of 2017

JUDGMENT : (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant/husband has challenged order, dated 09.02.2017, passed in F.C.O.P.No.140 of 2015 by the Judge, Family Court-cum-V-Additional District Judge, Tirupati.

2. The present appeal is filed on the ground that the lower Court did not consider the evidence of PWs.3 and 4 and has erred in coming to the conclusion that the appellant herein is having erectile dysfunction. Further, the lower Court ought to have seen that Ex.X.3 certificate issued by PW.3 shows that the appellant was potent and erred in rejecting the same on the ground that the appellant consulted doctor for erectile dysfunction. More over, the lower Court has ignored the fact that the evidence of PW.2 clearly supports the case of the appellant that the appellant and the respondent had decided to postpone their conjugal rights for a period of three months after the marriage.

3. While declaring the marriage between the appellant and respondent as a nullity, which took place on 26.01.2015, the lower Court has recorded that the appellant categorically admitted that after marriage, he spent three days at the parents house of the respondent and on the first night, the marriage was not consummated. Thereafter they put up separate family at Bangalore and then they went to

Munnar for honeymoon trip, where they spent for three days and during the said three days period, the marriage was not consummated and then they returned from Munnar and consulted Medical Officer at Bangalore. The lower Court further noted that mediation was conducted at the house of grand parents of the appellant and prior to that he consulted a Doctor at Tirupati and thereafter they both went to Bangalore, where misunderstandings arose between them.

4. It is pertinent to note that during cross-examination, PW.3-doctor stated that Erectile Dysfunction (E.D.) can be as a result of non-cooperation of other spouse or partner and Tazzel which he prescribed even can be used by healthy persons for having sexual happiness and for longer period of sex. As per the lab reports, he issued a certificate, dated 18.06.2015, wherein he stated that the appellant is fully potent and fertile.

5. Pursuant to order, dated 04.08.2017, the appellant and respondent are present in Court.

6. For identification of the parties, the appellant has produced driving licence vide No.F/TN/20/008020/2003 issued on 19.12.2003 and valid up to 18.12.2023 by the Assistant Licensing Authority, Tiruvallur. The photo copy of the same is taken on record (Original seen and returned to the appellant). The respondent has produced Aadhar Card vide No.7425 0418 6310 issued by the Government of India. The photo copy of the same is taken on record. (original seen and returned to the respondent)

7. During reconciliation, the appellant and respondent have mutually agreed to withdraw the allegations made against each other. Without going into the merits of the appeal, as the matter has been compromised between the parties, we hereby not inclined to decide the present appeal on merit.

8. It is made clear that both the parties, especially the respondent/wife has withdrawn all the allegations against the appellant and the appellant has also withdrawn the allegations made against the respondent.

9. Accordingly, we hereby dispose of the appeal considering the fact that the marriage, dated 26.01.2015, is dissolved on their mutual consent. Consequently, the marriage dissolved by the Court below on nullity is hereby set aside.

10. In view of the above, the appeal is disposed of.

11. Miscellaneous petitions pending, if any, shall stand closed.

SURESH KUMAR KAIT, J

N. BALAYOGI, J

29th August 2017.

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