

**HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

**CIVIL REVISION PETITION No.5881 of 2016**

**ORDER:**

The un-successful petitioner-husband filed this Civil Revision Petition, under Article 227 of the Constitution of India, assailing the orders, dated 25.10.2016 passed by the learned Principal Senior Civil Judge, Tirupati, Chittoor District, in I.A.No.880 of 2016 in H.M.O.P.No.65 of 2014 filed by the petitioner-husband against the respondent-wife under Section 45 of the Indian Evidence Act read with Section 151 of Code of Civil Procedure, 1908, requesting to refer the respondent-wife to the Medical Board, SVRRGG Hospital, Tirupati, for her medical examination and furnishing a opinion as to whether or not she is suffering from "Rheumatoid Arthritis" and to ascertain the age of the said disease.

2. I have heard the submissions of Sri S. Lakshminarayana Reddy, learned counsel for the petitioner-husband, and of Sri Jagadeesh Chandra Prasad, learned counsel for the respondent-wife. I have perused the material record.

3. The parties in this Civil Revision Petition shall hereinafter be referred to as petitioner-husband and respondent-wife for convenience and clarity.

4. Before proceeding further it is necessary to refer to the material facts, which are as follows:

The wife filed the original petition under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. The husband having filed a counter is resisting the said Original Petition. While so, the husband filed the present Interlocutory Application for medical examination of his wife by Medical Board, SVRRGG Hospital, Tirupati. The wife filed a counter resisting the application of the husband. On merits and by the orders impugned in this revision, the trial Court dismissed the petition of the husband; therefore, the husband is before this Court.

5. The case of the petitioner-husband in support of his request, in brief, is as follows:

The wife filed Original Petition for restitution of conjugal rights with all false allegations. He is contesting the said Original Petition of the wife by filing a counter. In the counter he has specifically pleaded that his wife is suffering with ill-health – ‘Rheumatoid Arthritis’ and that she is not fit for leading marital life. To have her treated for the said ailment, he has taken her to many hospitals. However, she is not cured of the said ailment. He has already filed necessary documents in support of his contentions. In view of his contentions, it is very much necessary to refer the

respondent-wife to the Medical Board, SVRRGG Hospital, Tirupati, for her examination and obtaining a medical opinion as to whether or not she is suffering from 'Rheumatoid Arthritis' and the age of her said disease. If she is referred to the hospital and an opinion is obtained from the Medical Board of the Hospital, the truth will come out. If the request of the petitioner-husband is granted no prejudice would be caused to the respondent-wife.

6. On the contrary, the case of the wife in her counter in brief is this:

The material allegations in the affidavit of the husband filed in support of the petition are all false. The allegation that she is suffering from ill-health - 'Rheumatoid Arthritis' and that she is not fit for leading marital life and that despite treatment her ailment is not cured and that her examination by Medical Board is necessary in the facts and circumstances of the case, are all false. The petitioner has no right to make a request to refer this respondent to the hospital for medical examination. The disease is not dangerous disease and it is nowhere laid down that a lady suffering from such a disease is unfit for leading marital life. Hence, the petition may be dismissed.

7. At the hearing, learned counsel for both the sides made submissions in line with the respective cases of the parties, which are already stated supra.

8. Learned counsel for the petitioner-husband while drawing the attention of this Court to the contentions in the counter filed in the Original Petition pointed out that the husband has specifically pleaded in his counter as follows:

*“12. The respondent submits that when the petitioner was staying in the house of the respondent he noticed and also informed that she was not in a position to move from the bed especially early hours of the day and also most of the time she was running with high temperature and her eyes are always in reddish colour, she was not in a position to sit on the floor and also not in a position to raise from the floor. She went on complaining unbearable pain and joints especially in cervical region. There were occasions that she was lifted from bed and also from bath room in view of her unbearable joint pains. She was not a position to co-operate for conjugal life also. Hence the petitioner was taken to Positive Homeopathy clinic on 21.03.2012 where she revealed that she had been suffering from “Rheumatoid Arthritis” since her teen age on advice by the doctor she produced some of the Diagnostic reports the prescription of Dr.Hemakumar Reddy, Assistant Professor and Orthopadician and also Sri Venkateswara Institute of Sciences, Tirupati and she further revealed that her mother was also*

*suffering with the same problem since long time. The prove the said fact the diagnostic reports and prescriptions will be filed at the time of trial which are necessary for material particulars.*

*13. The respondent submits that on the advice of the elders the petitioner took the respondent to Vijaya Hospital, Chennai on 27.03.2012 and she underwent so many tests/instigations apart from that she under went some of the medical tests in Medal Precision Diagnostics as referred by the Vijaya Hospital. The Doctors whom stated that the petitioner is suffering from Rheumatoid Arthritis since long time and also revealed that she would not have been married in view of the chronic disease especially her mother had also been suffering from the same problem since long time. The said problem was already extended to other parts like Ophthalmology, blood and survival rips. The period of her survival with this problem is very limited and every possibility of getting cancer, skin and heart problems. The doctors also conducted gynaec tests and found that she had not conceived as HGC was not detected at the urine. They further suggested not to go for pregnancy. The doctors also revealed that in view of the said chronic disease, she developed suicidal tendencies and some of the reports were given on 27.03.2012 and some of the reports were given on 28.03.2012. The reports also filed for necessary and material particulars.”*

*(Reproduced verbatim)*

8.1 He further submitted as follows: “Thus, there is medical record and the same was already filed by the husband to show that the wife is suffering from chronic disease and she is unfit for leading conjugal life. However, the trial Court ignoring the contentions of the husband and the medical record and the fact that the examination of the wife is highly necessary to substantiate the defence of the husband erroneously dismissed the petition of the husband and refused to refer the wife for medical examination, *inter alia*, wrongly observing that the contention of the husband that the wife is not fit for marital life on account of her disease, which she is allegedly suffering from since a long time, *prima facie*, cannot be believed for the reason that the petitioner-husband and respondent-wife lead conjugal life and were already blessed with a daughter. The said observation is not only erroneous but also un-warranted in an order made in an Interlocutory Application. Such far-reaching observation ought not to have been made by the trial Court as such an observation will have a bearing on the merits of the main matter. The trial Court order is therefore, not sustainable and is liable to be set aside.”

8.2 Contending thus, he prayed for allowing the revision and setting aside the order of the Court below and consequently allowing the application of the petitioner. He alternately contended that in view of the erroneous

observations of the trial Court, the impugned order may be set aside and the petition may be remitted to the trial Court for fresh hearing and passing appropriate order afresh, on merits.

9. Per contra, learned counsel for the respondent-wife while reiterating her pleaded case and supporting the orders of the Court below contended that the trial Court in its order while making proper observations categorically stated that the observation is a *prima facie* observation and therefore, no final adjudication is made on the disputed issue and hence, there is no need to remand the matter to the trial Court and that in any view of the matter this Court while dismissing the revision may make an observation that the trial Court while disposing of the main matter shall not be influenced by its observations, if any, made in its order impugned in this revision. He would further submit that the petitioner and respondent lead conjugal life/family life for a long time and they were blessed with a daughter on 22-11-2012 and that therefore, the said fact clearly establishes that the wife is fit for conjugal life and that the husband has not filed any application for grant of divorce till date and, therefore, mere opposition of the original petition filed by the wife for restitution of conjugal rights is of no avail and that the order of the trial Court, which is justified, in the facts and circumstances of the case does not warrant interference.

10. I have bestowed my attention to the facts and submissions.

11. Though the petitioner and respondent traded serious allegations in the pleadings in the Original Petition, it is not necessary to advert to the said contentions while considering the merits of the present matter. Be it first noted that the marriage between the parties took place on 17.11.2011. Admittedly, the parties lead family life and under the lawful wedlock, the respondent gave birth to a daughter on 22.11.2012. Her specific contention is that she was necked out of the matrimonial home in October, 2012 in order to contact a second marriage. Per contra, the specific defence of the husband is that even prior to the marriage and since a long time the wife is suffering from chronic 'Rheumatoid Arthritis' and that at some certain times she was not even in a position to move or get up on her own and that even during the time the parties lived together, the wife was mostly residing with her parents and that in view of the long treatment she received and the medical record, which the husband has produced, it is manifest that it is not possible for her to lead conjugal life. Admittedly, the wife is appearing before the trial Court. She is supposed to appear in person and prosecute her original petition. Therefore, during the course of trial, the trial Court will have ample opportunity to observe the physique, physical condition, movements and

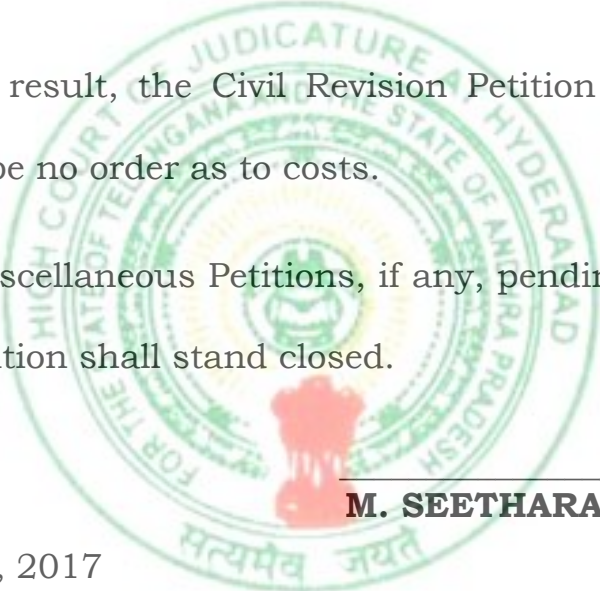
deportment of the respondent-wife. The Court may also record the same while recording her deposition to make the Court's observation a part of the record, as per procedure. The same will certainly help the trial Court in formulating an appropriate opinion. As rightly pointed out by the learned counsel for the petitioner, the trial Court in its order observed that 'the contention of the respondent that his wife is not fit for marital life on account of her disease, which she is allegedly suffering from since a long time, *prima facie*, cannot be believed for the reason that both parties lead conjugal life and are blessed with a daughter'. Therefore, it appears that the said *prima facie*, observation is made for a limited purpose for the disposal of the Interlocutory Application and hence, the contention or apprehension of the husband that such observation may have a bearing on the merits of the matter cannot be countenanced. The trial Court also observed in its orders that the aspect whether or not the wife is suffering from the disease as alleged by the husband and whether the same would be a valid ground to disallow the request of the wife for restitution of conjugal rights would be examined in the main proceedings and that it is for the petitioner-husband to produce necessary evidence both oral and documentary to substantiate his defence.

12. For the aforestated reasons and on the analysis of the facts and circumstances of the case, this Court is of the

considered view that the petitioner-husband has not made out valid and sufficient ground calling for interference with the order of the trial Court. Viewed thus, this Court finds that there is no merit in the revision and that the order of the trial Court, which is justified, does not warrant interference. However, the trial Court is directed to decide the Original Petition purely on its merit uninfluenced by its observations in the order impugned in this revision and the observations of this Court, if any, in this Order.

13. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.



**M. SEETHARAMA MURTI, J**

February 10, 2017

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**HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**



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