

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1295 OF 2013

ORDER:

This Civil Revision Petition is filed by the petitioner/husband under Article 227 of the Constitution of India challenging the order, dated 28-12-2012 passed in I.A.No.398 of 2012 in O.P.No.4 of 2011 by the Senior Civil Judge, Kothapeta, East Godavari District.

2. Petitioner herein filed the above interlocutory application under Section 151 CPC to refer the respondent herein/wife for medical examination by a competent doctor to find out whether she was subjected to sexual intercourse or not. The said application was dismissed by the trial Court by recording reasons.

3. Originally the respondent herein/wife filed the above O.P. under Section 12 of the Hindu Marriage Act, 1955 for annulment of marriage on the specific ground that the petitioner is an impotent i.e., unable to perform sexual act. The matter is being contested by the petitioner herein asserting that he is potent.

4. During enquiry, an application was filed by the respondent/wife to refer the petitioner/husband for medical examination. Accordingly, he was referred to Medical College Hospital, Kakinada for potency test and the doctor who examined the petitioner issued a report, which is in favour of the petitioner/husband. Dissatisfied with the opinion expressed by the Doctor, Medical College Hospital, Kakinada, she filed another application for the same relief to refer the petitioner to another group of doctors for examination and opinion, which was allowed by the trial Court and the said order has become final.

5. As the matter stood thus, the petitioner herein/husband filed application to refer the respondent herein/wife for medical examination to find out whether she was subjected to sexual intercourse or not. The said application was dismissed on the ground that no such attribution is made against the respondent in the counter and denied the relief.

6. Aggrieved by the said order, the present revision is filed raising several contentions mainly on the ground that to prove that she was subjected to sexual intercourse and to disprove that the petitioner is not an impotent, the examination of wife is necessary. But the trial Court did not consider this aspect in a proper perspective and committed error in dismissing the petition.

7. During hearing, Mr.Sai Krishna, learned counsel for the petitioner/husband would contend that to prove the *mala fides* on the part of the respondent/wife and to disprove her contention that the petitioner is impotent, her examination is necessary.

8. On the other hand, Mr.VVSS Kameswara Rao, learned counsel for the respondent/wife contended that against her will, she cannot be sent for examination and in support of his contention, he placed reliance on the judgment of this Court reported in **PATHIGA SURESH V SMT.PATHIGA ANURADHA**¹.

9. It is an admitted fact that the respondent/wife filed the above O.P. under Section 12 of the Hindu Marriage Act against the petitioner herein/husband for annulment of marriage on the ground that the petitioner is an impotent. Thereafter, she filed two successive applications to refer her

¹ 2017 (2) ALT 361

husband for medical examination to conduct potency test. When the petitioner was referred to medical examination by the Medical College Hospital, Kakinada, the Doctor who examined him gave opinion, which is in his favour and against the wife. Later she filed another application to refer her husband for medical examination by a group of Doctors and the same was allowed. The present petition is filed contending that she had sexual intercourse and to disprove that the petitioner is impotent, her examination is necessary.

10. Even if the wife is subjected to sexual intercourse, it is difficult for the doctors to give opinion whether she had sexual intercourse with the petitioner or not that too almost after six years from the date of filing of the petition for annulment of marriage. Even if she participated in sexual intercourse, it is difficult to find out whether she had sexual intercourse with the petitioner during wedlock. Therefore, I find no merits to refer the respondent/wife to medical examination to find out whether she had sexual intercourse with the petitioner since there is no possibility to give opinion that she had sexual intercourse with the petitioner after six years from the date of filing of the petition. Therefore, the revision is devoid of merit and is liable to be dismissed.

11. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending, in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

DATED: 19-06-2017.

Hsd