

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.07.2018

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP.(PD).No.4271 of 2017
and CMP.No.20022 of 2017

Dr.B.Ayshwaria

.. petitioner

v.

Dr.T.Siva Prasanna

.. respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 13.10.2017 passed in IA.No.1822 of 2017 in OP.No.4302 of 2015 on the file of the III Additional Principal Judge, Family Court, Chennai.

For petitioner : Mr.K.Santhakumari.

For Respondent : Geetha Ramaseshan

O R D E R

The revision petitioner herein is the wife, the respondent in HMOP.No.4302 of 2015 and petitioner in OP.No.2621 of 2016. The respondent herein is the husband, the petitioner in HMOP.No.4302 of 2015 and the respondent in OP.No.2621 of 2016.

2. The revision petitioner/wife filed OP.No.2621 of 2016 on the file of the Family Court Chennai under Section 9 of the Hindu Marriage Act for restitution of conjugal right. The respondent/husband filed HMOP.No.4302 of 2015 on the file of the Family Court, Chennai under Section 13(1)(i-a) & 13(1)(ii) of the Hindu Marriage Act, 1955 for divorce on the ground of cruelty.

3. The respondent/husband filed divorce petition in HMOP.No.4302 of 2015 on the ground of cruelty, non consummation of marriage from the day of marriage and he specifically made allegations that during first week of November 2014 he informed the revision petitioner's mother who is a Gynecologist about the behaviour of the petitioner being in the house and not evincing to have sexual intercourse with him in spite of giving all counseling and advice. Further, on advice of the petitioner mother, the respondent came to

Chennai along with the petitioner on 08.08.2015 and went to the petitioner's house. The petitioner mother called Dr.Kuppulakshmi, Gynecologist who is a friend of her to their house itself to do examination of the petitioner. The petitioner after struggling 30-40minutes with the Gynecologist had allowed partially to do vaginal examination and other medical examination. Dr.Kuppulakshmi advised the respondent to do vaginal examination regularly and also to meet a Psychiatrist and to have a consultation. The petitioner is not willing to live with the respondent and to lead the matrimonial life. The respondent further states that the petitioner is not profess Hindu religion and she is very much interested to cease to be a Hindu by conversion into Christianity.

4. The revision petitioner/wife filed OP.No.2621 of 2016 for restitution of conjugal relationship. During the pendency of this OP, the revision petitioner filed an interlocutory application in IA.No.1822 of 2017 in HMOP.No.4302 of 2015 to direct her to undergo medical examination by a competent Gynecologist in a Government Hospital and further direct the Gynecologist to submit a report thereof. After giving opportunity to the respondent/husband, the trial Court dismissed the application filed by the petitioner/wife. Feeling aggrieved against the said order, the revision petitioner is before this Court.

5. The main contention of the revision petitioner in OP.No.2621 of 2016 for restitution of conjugal relationship, consummation of marriage was not fully completed, the petitioner admitted that she got some problem in the private parts while making an attempt to intercourse. She is having abnormal pain, she met Gynecologist Dr.Kuppulakshmi and underwent vaginal examination as per examination, the Doctor told that the petitioner was little anxious otherwise everything was normal. The Doctor advised them to retry to practice fingering for a week and told that the respondent should help the petitioner, the respondent was stressed in searching for a job and they did not try the techniques as per the advice of the Gynecologist. Later on, the parties met the Psychiatrist and even he told the same that the petitioner was little anxious and stressed and gave T.Clonazepam, anti anxiety tablet and to slowly try, after consuming the tablets, the petitioner felt drowsy. The petitioner was always ready and willing to live with her husband.

6. Further, the petitioner has some difficulties while she was having intercourse, hence, the petitioner is not able to cooperate with the respondent for sexual intercourse. As suggested by Dr.Kuppulakshmi, Gynecologist that with the help of the respondent/husband the problem can be solved slowly within a short period of time, but the respondent was not cooperating for the same. Except the problem as stated above and also the suggestion putforth by the Gynecologist, the

revision petitioner has no other problem. Hence, she filed an application before the Family Court, Chennai to direct her to undergo medical examination by a competent Gynecologist in a Government Hospital and to submit a report. The Family Court without considering the above aspects simply dismissed the application filed by the revision petitioner by referring to the judgment of the Rajasthan High Court reported in II (2007) DMC 153 in the case of Renuka v. Rajendra Hada decided that the defect of impracticability for a consummation of marriage cannot be once again found correct by way of subject to petitioner/wife for medical examination. It is only a steps for time consuming and the trial Court inclined to appreciate the objection raised by the respondent and dismissed the application filed by the petitioner/wife.

7. The learned counsel for the petitioner would further submit that she had some problem in the private parts during the intercourse, the Gynecologist Dr.Kuppulakshmi advised the petitioner and the respondent to do fingering practice, it has to be done with the help of the respondent/husband, the petitioner alone cannot do it. In the case on hand, both the parties are Doctors, the respondent/husband is well aware about the problem of the petitioner and if he cooperates for the fingering practice, as suggested by the Gynecologist, the problem will be solved. The respondent in order to get divorce filed HMOP.No.4302 of 2015 on the file of Family Court, Chennai on the ground of mental cruelty and non consummation of marriage and by raising false allegation against the revision petitioner. The trial Court had found impracticability for consummation of marriage, as advised by the Gynecologist, once the parties started to do fingering practice, the problem facing by the revision petitioner will be solved. The trial Court has not considered the said aspect, simply dismissed the application.

8. The learned counsel for the respondent/husband would submit that the revision petitioner is not at all cooperating for sexual intercourse and there is no consummation of marriage and the purpose of marriage itself is defeated. In order to protract the proceedings, the petitioner filed an application to undergo medical examination by a competent Gynecologist in a Government Hospital and to submit a report. Mere filing an application will not improve the case of the petitioner and it will not be helpful to the case of the petitioner. Hence, the order passed by the trial Court does not warrant any interference.

9. Heard the rival submissions made on both sides and perused the records.

10. It is not in dispute that the marriage was solemnized between the parties on 29.08.2014. After the marriage, there was no consummation of marriage. From the materials it is seen, that the revision petitioner herself admitted that she

is receiving abnormal pain, therefore she could not allow the respondent/husband to have sexual intercourse. Subsequently, for some other reasons, the respondent/husband filed HMOP.No.4302 of 2015 for divorce on the ground of mental cruelty and non consummation of marriage. Thereafter, the petitioner/wife filed OP.No.2621 of 2016 for restitution of conjugal relationship. It is stated that the petitioner is having some vaginal problem which is curable one, the report of the Gynecologist says that it can be cured with fingering practice. But the petitioner and the respondent decided to defeat the impracticability for a consummation of marriage. The respondent/husband has stated various other reasons for divorce and also in the counter filed in the OP for restitution of conjugal rights. Both the parties admitted the defects and the difficulties which they are facing in the marital life.

11. The questions as to whether the problem facing by the petitioner is curable or not; and whether the consummation of marriage is practicability or impracticability has to be decided only after trial. For which, an expert opinion is necessary, the revision petitioner is not asking the respondent/husband to undergo any test as against the will and wish of the respondent. It is the revision petitioner herself wants to undergo the medical examination in order to remove the allegations made against her with regard to the impracticability for consummation of marriage. If the petitioner/wife undergoes for medical examination, no prejudice would be caused to the respondent/husband.

12. Under these circumstances, the Gynecologist opinion is absolutely necessary to decide the case on this aspect. Hence, this Court is inclined to set aside the order passed by the Family Court, Chennai in IA.No.1822 of 2017 in HMOP.No.4302 of 2015 dated 13.10.2017.

13. In the result, the revision petition is allowed and the order passed in IA.No.1822 of 2017 in HMOP.No.4302 of 2015 dated 13.10.2017 passed by the Family Court, Chennai is hereby set aside. The trial Court is directed to take appropriate procedural steps to send the revision petitioner to the Rajiv Gandhi Government General Hospital, Chennai for conducting medical examination by the Senior Gynecologist available in the Hospital and to obtain the medical report thereon. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

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To

1.The III Additional Principal Judge,
Family Court, Chennai

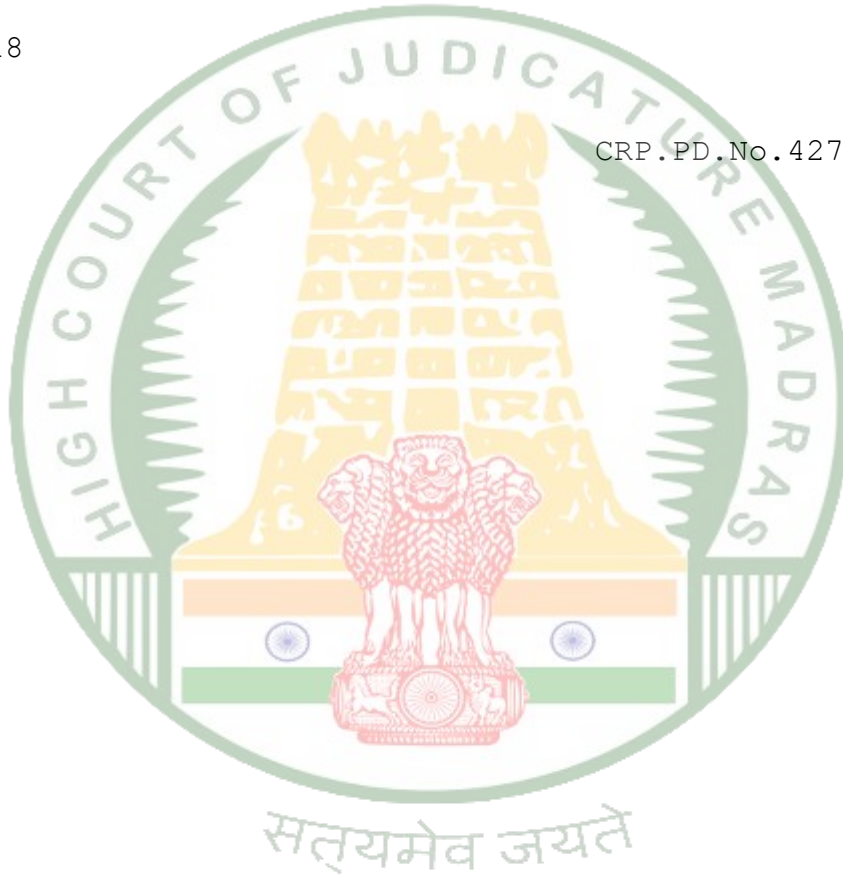
2.The Rajiv Gandhi Government Hospital,
Chennai.

+3cc to M/s.Geeta Ramaseshan, Advocate SR.No.43474

+1cc to M/s.K.Santhakumari, Advocate SR.No.43356

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