



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.11.2017

DELIVERED ON : 29.01.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.1181 of 2017

and

C.M.P. (MD) No.5543 of 2017

Srividya : Petitioner/Petitioner/Petitioner

vs.

T.Arunachalam : Respondent/Respondent/Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.04.2017 made in I.A.No.99 of 2016 in H.M.O.P.No.172 of 2012, on the file of the Principal Subordinate Court, Trichy.

For Petitioner : Mr.P.Thirumahilmaran

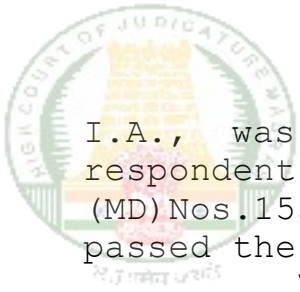
For Respondent : Mr.C.T.Perumal

ORDER

The petitioner, who is the petitioner in H.M.O.P.No.172 of 2012, has filed the above Civil Revision Petition, challenging the fair and decreetal order dated 28.04.2017, made in I.A.No.99 of 2016 in H.M.O.P.No.172 of 2012, on the file of the Principal Subordinate Court, Trichy.

2. The brief facts of the case are as follows:

2.1. The petitioner herein filed H.M.O.P.No.172 of 2012 on the file of the Principal Subordinate Court, Tiruchirappalli, under Sections 13(1)(1-a) and 12(1)(a) of the Hindu Marriage Act, seeking divorce mainly on the ground of cruelty and impotency. The respondent also filed a petition in H.M.O.P.No.3199 of 2014 on the file of the Family Court, Chennai seeking divorce on the ground of adultery and desertion. The respondent also filed a petition in I.A.No.16 of 2014 in H.M.O.P.No.172 of 2012 on the file of the Principal Subordinate Court, Tiruchirappalli praying to refer the wife before the medical board for examination for the purpose of proving that the marriage was consummated. The said



I.A., was dismissed by the trial Court, against which, the respondent/husband preferred Civil Revision Petitions in C.R.P. (MD) Nos. 1559 and 1560 of 2014 before this Court and this Court passed the following order:

"In such circumstances, as directed in the above decision, this Court also is inclined to refer both the parties to the Dean of the Madras Medical College Hospital, who shall constitute a team of qualified doctors to test the potency of the respondent/husband and another team to medically examine the petitioner/wife as regards her virginity. The Dean after the completion of such examination shall get the report from the team and forward the same directly to the Principal Subordinate Judge, Tiruchirappalli by name for further proceedings in H.M.O.P.No.172 of 2012."

2.2. According to the petitioner, as per the order of this Court, she has undergone the medical examination before the Rajiv Gandhi Government General Hospital, Chennai-3 and the report was also submitted. However, the respondent did not undergo the medical examination as directed by this Court.

2.3. Now the petitioner/wife has filed the present petition in I.A.No.99 of 2016 in H.M.O.P.No.172 of 2012 on the file of the Subordinate Court, Tiruchirappalli, praying to refer the respondent to a medical board for examination and to find out whether the respondent is affected by Klinefelter Syndrome or not and to direct the medical board to submit a report. After considering both sides, the trial Court had dismissed the application filed by the petitioner/wife. Against which, the present Civil Revision Petition has been filed.

3. The learned Counsel for the petitioner submitted that despite a direction was given by this Court to the respondent/husband to undergo the medical examination before the Medical Educational Department, Rajiv Gandhi Government General Hospital, Chennai, the respondent did not co-operate for the same. But, the respondent has, now, filed written submissions and documents as if his medical report was received well in advance on 05.11.2015. It is further submitted that the respondent purposefully misrepresented the facts. The learned Counsel further submitted that because of the problem of Klinefelter Syndrome, there is no pregnancy for the past ten years and the respondent/husband is not fit for sexual life. Under such circumstances, it is just and necessary to refer the respondent/husband to appear before a medical board for examination, to find out as to whether the respondent is affected by Klinefelter Syndrome or not and to submit a report. Hence, she needs interference of this Court in the order passed by the trial Court.



4. The learned Counsel for the respondent/defendant, on the other hand, reiterating the facts, submitted that he had filed two petitions before this Court seeking orders, one for undergoing potency test for himself and another for virginity test for the petitioner/wife and both the petitions were allowed by this Court. The respondent further submitted that both of them undergone the test, as directed and the results of the virginity test referred for the petitioner was received, which disclosed the fact that the petitioner had lost virginity. Subsequent to that, the petitioner had changed her stand before this Court in Tr.C.M.P.No.112 of 2016, stating that she had inadvertently included the ground of impotency in the original petition, seeking divorce, therefore, the same has to be deleted.

5. The learned Counsel for the respondent further submitted that even though the petitioner had filed her divorce petition before the Principal Subordinate Judge, Trichirappalli in H.M.O.P.No.172 of 2012 on the ground of cruelty, the allegation of infertility of husband cannot be considered to be a cruelty. The learned Counsel for the respondent further submitted that the petitioner is having illegal relationship with the respondent's business partner. By suppressing all the facts and having failed in the virginity test, the petitioner had filed this vexatious petition seeking the infertility test for the respondent, even though infertility is not a ground for divorce and is non-existent in the provisions of the Hindu Marriage Act. Hence, he prays for dismissal of the Civil Revision Petition.

6. Heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondent and perused the materials available on record.

7. A perusal of records would show the pendency of criminal cases against each other, including illegal relationship, etc.

8. I am not inclined to go into the details of those allegations against each other and the only thing, which has to be gone into is whether referring the respondent to a medical board for Klinefelter Syndrome check-up is necessary or not.

9. No doubt, this Court, by order dated 01.04.2015, in CRP(MD) Nos.1559 & 1560 of 2014, has referred both the parties to the Dean, Madras Medical College Hospital for medical examination and after receiving an adverse report, the petitioner herein has changed her stand in the Tr.C.M.P. proceedings.

10. Even as per the petitioner, the overall result of this disease is that it only leads to infertility. Infertility is not a ground for obtaining divorce. Moreover, this Court has already



referred both the parties to the Dean, Madras Medical College and after the examination, in Tr.C.M.P. proceedings, the petitioner herself has stated that the ground of impotency was inadvertently mentioned. Now, she has filed the present petition with a different stand that the respondent is affected with Klinefelter Syndrome, which is only on ego against the respondent, which will serve no purpose.

11. As rightly observed by the learned Judge, it is not a case as the marriage has not been consummated and proving infertility is not a ground for divorce. I am of the considered view that there will be no useful purpose in allowing this petition and the same is liable to be dismissed.

12. In result, this civil revision petition is dismissed, as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Trichy.

+ 1 cc TO Mr.C.T.Perumal , Advocate in SR No. 45093
+ 1 cc TO Mr.P.Thirumahilmaran , Advocate in SR No. 44412

gk
AE/KKR/SAR1/08.02.2018/4P/4C

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