



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (PD) (MD) No.854 of 2016
and
CMP(MD)No.4379 of 2016

Dr.Sathishkumar

... Petitioner

Vs.

Dr.Chinthiya

... Respondent

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 04.03.2016 made in I.A No.41 of 2015 in HMOP No.74 of 2014 on the file of the Family Court, Srivilliputhur and set aside the same.

For Petitioner : Mr.S.Srinivasa Raghavan

For Respondent : Mr.S.Devaraj

ORDER

The petitioner herein filed H.M.O.P No.448 of 2013 before the Family Court, Chennai for dissolving his marriage with the respondent herein. The said O.P was transferred to the Sub Court, Srivilliputhur and renumbered as HMOP No.74 of 2014. In the said HMOP, the petitioner herein filed I.A No.41 of 2015 for subjecting the respondent herein to undergo a medical test with regard to her mental condition. The court below by the order impugned in this civil revision petition dismissed the said I.A No.41 of 2015. Aggrieved by the same, this civil revision petition has been filed.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the revision petitioner submitted that the court below has dismissed the I.A on the footing that the fundamental right of the respondent guaranteed under Article 21 of the Constitution of India would be infringed. It is also pointed out that this cannot be a correct proposition. The Hon'ble Supreme Court in the decision reported in 2003 (2) CTC 760 (Sharda vs. Dharmpal) held that parties to a civil proceedings cannot invoke the said Article.



4. But then, as rightly contended by the learned counsel appearing for the respondent, a roving enquiry cannot be conducted in this case. There must be a prima facie reason for sending the parties to medical examination. The respondent is a practicing Doctor. She is presently working on deputation basis at Srivilliputhur in a Government Hospital. She is ready to appear before the Family Court, Srivilliputhur. The learned Family Court Judge shall question the respondent and if the Family Court Judge is of the view that the respondent has to undergo medical examination, then he can pass appropriate orders in I.A No.41 of 2015 filed by the petitioner herein. If the court is satisfied that the respondent is mentally sound, the question of ordering medical examination will not at all arise.

5. The learned counsel appearing for the revision petitioner would draw the attention of this Court to the relevant provision in the Hindu Marriage Act, 1955. The petitioner's complaint is that the respondent is suffering from mental illness. This Court clarifies that the question of allowing the I.A filed by the petitioner herein is depending upon the prima facie satisfaction to be arrived at by the presiding Judge of the Family Court, Srivilliputhur in this regard. It is further contended by the respondent's counsel that the revision petitioner herein had earlier filed an application for the very same relief. His specific plea is that the said I.A was dismissed and that without disclosing the same, the present I.A has been filed.

6. The court below shall take into account this aspect also while disposing of I.A No.41 of 2015. The court below shall pass appropriate orders on merits and in accordance with law. The order impugned in this civil revision petition is set aside only on a limited ground. Since the court below has proceeded on a misconception of the legal position, the matter is remitted to the court below. This civil revision petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The Judge, Family Court , Srivilliputhur.

+2cc to Mr.S.Srinivasa Raghavan, Advocate, Sr.Nos.90002 & 89796.

+1cc to Mr.G.Aravinthan, Advocate, Sr.No.89771.

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