

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P.(PD).No. 3358 of 2019

V.Sujatha ... Petitioner

-Vs-

B.Vijayavelu ... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India against the order dated 12.01.2018 passed by the III Additional Family Court at Chennai in I.A.No. 2574 of 2017 in the O.P.No. 2634 of 2006.

For Petitioner : Mr.E.Maragatha Sundari

For Respondent : Mr.Vijayavel
Party in person.

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A.No. 2574/2017 in O.P.No. 2634/2006 on the file of the III Additional Family Court, Chennai by order dated

12.01.2018.

2. Before the Family Court, Original Petition was filed by the respondent/ husband for dissolution of the marriage, where the present Interlocutory Application in I.A.No.2574 of 2017 was filed by the revision petitioner/wife to take DNA test of her child and the respondent/ husband, through Forensic Science Department in the laboratories anywhere outside Tamil Nadu.

3. The Family Court has directed the parties to undergo the DNA test in the Forensic Science Departments in the Lab at Mylapore, Chennai and only on the apprehension that if such a test takes place in any laboratory/Hospital within Tamil Nadu, it is likely to be influenced by the respondent/husband and only in that context, the prayer in the interlocutory application was sought for by the petitioner/wife before the Family Court and the said application since had been rejected by the Family Court, through the impugned order dated 12.01.2018, the present Civil Revision petition has been filed by the petitioner/wife.

4. Heard M/s.E.Maragatha Sundari, learned counsel for the petitioner/wife and Mr.Vijayavel/husband, who appeared as party in person.

5. The respondent/husband who appeared as party in person stated that, the Original Petition is pending from 2006 ie. for 13 years without any decision and the Family Court having heard the Original Petition, fixed time to decide the matter by passing a final order. In order to drag on the proceedings, the said Interlocutory Application was filed, which has also been rejected by the Court below as against the said order, the present revision petition is filed, only to drag on the proceedings further.

6. He would further submit that, in so far as taking the DNA test is concerned, the respondent/husband has already agreed over the same and that is the reason, in the year 2017 itself, the order has been passed by the Court below, wherein, in the Forensic Science

Department at Mylapore, Chennai, the parties were directed to take the test. In one of the communications dated 05.09.2017, the Deputy Director, Forensic Science Department at Chennai – 4 stated that, the blood sample to be drawn on or before 14.11.2019.

7. It is stated by the respondent/husband that, only at the instance of the petitioner/wife, the direction for undergoing DNA test sample, was given, for which, he has agreed, however, it is getting delayed and the present petitioner/wife again approached this Court, challenging the said orders to prolong further.

8. However, the learned counsel for the revision petitioner/wife submitted that, the respondent/husband through various sources might influence the people working in Hospitals in Tamil Nadu. Therefore, the petitioner/wife has lost confidence on the system i.e medical system that is functioning in the state and that is the reason, she wanted DNA test, to be conducted outside the State and that is why, the said application was filed before the Trial Court.

9. I have considered the submissions of the learned counsel appearing for the petitioner and the respondent who appeared party in person.

10. The respondent/husband represented that, he is willing to undergo the DNA test and he has been ready for the said exercise right from 2017 and there has been a direction by the trial Court already to that effect to the Forensic Science Department to draw blood samples, however for one reason or the other, the same could not be carried out.

11. In so far as the present revision petition is concerned, the petitioner insists that the test is to be only taken outside the State of Tamil Nadu. This Court is not impressed by the said reasoning given by the learned counsel appearing for the petitioner/wife that if the test is taken in any Hospital in Tamil Nadu, the respondent/husband would influence the Doctor and the technicians who will be involving in the process of DNA test.

12. If, this kind of presumptive submission without any basis is made, then certainly, nothing in the medical field could be done in the State of Tamil Nadu. Therefore, the said reason given by the petitioner/wife's side is liable to be rejected.

13. At this stage, the learned counsel appearing for the Revision petitioner would make an appeal before this Court that atleast, the learned Advocate on behalf of the Revision petitioner can be permitted to be present at the time of taking blood sample for the proposed DNA test in order to instill confidence, in the minds of the Revision Petitioner.

14. In so far as the said contention is concerned, this Court feels that the learned Advocate is not an expert in the medical field. Therefore no useful purpose would be served.

15. However, in the circumstances, in order to instill confidence

in the minds of the petitioner/wife a Medical Officer to the choice of the Revision Petitioner can be directed to be present, at the time of drawal of blood sample.

16. In view of the aforesaid submissions, facts and circumstances of the case, this Revision Petition is disposed of with the following directions;

(i) That the trial Court shall permit the petitioner to have the doctor, according to her choice, to be present, at the time of drawal of blood sample from the respondent/husband as well as the child, for the purpose of proposed DNA test in this regard. The name of the doctor to be suggested by the revision petitioner shall be incorporated in an affidavit to be filed by her with a consent letter from the doctor concerned, and such affidavit with consent letter of the doctor, shall be filed before the Court below. On receipt of the same, the Court shall pass necessary orders, indicating the above by fixing a time limit and date.

(ii) The respondent/husband as well as the child of the petitioner shall be present before the Hospital/Laboratory concerned, as directed by the Court below, for the purpose of drawal of blood sample. The drawal of blood sample shall be

completed on the date so fixed by the Court below.

(iii) Once the DNA test is conducted and the result is reached from the laboratory to the Court below, the Original Petition can be decided at the earliest, preferably within three months, since the Original Petition has been pending from 2016 onwards.

(iv) Except for the aforesaid directions/modifications, the impugned order passed by the Trial Court, does not warrant any interference of this Court.

17. Accordingly, this Civil Revision petition stands disposed of.

No costs.

14.11.2019

Index: Yes / No

Speaking order / Non speaking order

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Note: Issue Order Copy on 19.11.2019

To

The III Additional Family Court,
Chennai

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R. SURESH KUMAR, J.

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