

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CRP (PD) NO.3885 OF 2017

AND

CMP NO.18161 OF 2017

N.Dinesh Kumar ... Petitioner

Vs.

R.Srividhya ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the further fair and decretal order dated 07.08.2017 in I.A.No.327 of 2014 in O.P.No.760 of 2013 passed by the V Additional Family Court, Chennai.

For Petitioner : Mr.V.Lakshminarayan
For Respondent : Mr.C.Rajan

ORDER

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The petitioner is the husband and the respondent is the wife. He filed a petition for declaring the marriage solemnized between him and the respondent as null and void, in O.P.No.760 of 2013, which is, at

present, pending before the V Additional Family Court, Chennai. Originally, during the pendency of the petition for divorce, the petitioner/husband also filed a petition in I.A.No.327 of 2014 for referring the respondent/wife for medical examination and the same was ordered on 18.03.2015, directing the respondent/wife to appear before the Rajiv Gandhi Government General Hospital, Chennai for medical examination for her mental illness.

2. The order dated 18.03.2015 passed in I.A.No.327 of 2014 was challenged before this Court. The Hon'ble Mr.Justice P.R.Shivakumar (as he then was) set aside the same, in CRP (PD) No.3614 of 2015 dated 12.02.2016 and directed the Family Court to rehear the application after having a personal interview with the respondent/wife and noting the observations at such personal interview and to pass orders. Thereafter, the matter was remitted back to the Family Court.

3. It is submitted by the learned counsel for the petitioner that the learned Judge had conducted personal interview and came to a conclusion that the respondent/wife has to be sent for medical examination to find out whether she has sound mind or not. Thereafter,

when the petitioner/husband filed a memo for implementing the said order, the Court also directed the respondent/wife to go for medical examination on 03.10.2017. However, the petitioner / husband came to know at a later point of time that there was a further order in the very same I.A.No.327 of 2014 dated 07.08.2017 that the respondent/wife has normal mental condition.

4. Aggrieved over the same, the petitioner / husband filed the present Civil Revision Petition seeking to set aside the further fair and decreetal order dated 07.08.2017 passed in I.A.No.327 of 2014 in O.P.No.760 of 2013 by the V Additional Judge, Family Court, Chennai.

5. Heard the submissions made on either side and perused the materials available on record.

6. The petitioner could produce a certified copy of the order dated 07.08.2017 in I.A.No.327 of 2014 in O.P.No.760 of 2013 issued on 06.09.2017 by the Superintendent of Family Court, Chennai. After receiving original bundle from the Court below, it is seen that a further order in I.A.No.327 of 2014 in O.P.No.760 of 2013 dated 07.08.2017 alone is available and the certified copy of the order obtained by the petitioner on 06.09.2017 is not available. According to the petitioner, the Family

Court, after conducting a personal interview in compliance with the directions issued by this Court in CRP (PD) No.3614 of 2015 dated 12.02.2016, has passed the order allowing the interlocutory application. But the further order passed on the same day disallows the petition filed by the husband. Surprisingly, the original order is not available whereas the further order is available. Normally, when an order is passed by a Court, it becomes *functus officio* and it cannot pass any further orders without issuing notice. At the most, there can be a review and not further order in a concluded case. If at all any modification is pleaded, that should find out the procedure of filing appropriate petition therein by adducing reasons. But passing further order as found in this case is alien to legal jurisprudence.

7. Learned counsel for the respondent/wife would vehemently contend that he was not aware of the first order. On application, he obtained only a further order dated 07.08.2017, which lead to him believe that the Court has declared that the wife has normal mental condition. Therefore, the reasoning given by the learned Judge in the so-called previous order is not sustainable. In the previous order, it is seen that the learned Judge has asked the respondent / wife that how many legs for an

eight legs insect. The answer given by the respondent/wife was "10 legs". On the basis of this answer and the personal interview conducted, the learned Judge came to the conclusion that the respondent / wife does not have sound mind is according to the learned counsel for the respondent/wife as well as in the opinion of this Court, cannot decide the mental stability of the respondent / wife. Lack of general knowledge is something different from lack of mental stability. In such circumstances, the so-called order relied on by the petitioner will have to undergo the test, if the further order is set aside.

8. The main grievance of the petitioner itself is that the proceedings will be protracted if the present order is set aside and if the so-called previous order dated 07.08.2017 is restored. Necessarily an opportunity should be given to the respondent / wife to challenge that order, which stands against her. In such a situation, this Court is of the considered opinion that it is better to redo the exercise of giving fair opportunity to both the parties.

9. Therefore, this Court is inclined to set side both the further order dated 07.08.2017 in I.A.No.327 of 2014 in O.P.No.760 of 2013 and

the original order 07.08.2017 in I.A.No.327 of 2014 in O.P.No.760 of 2013 evidenced by the certified copy issued by the Family Court, dated 06.09.2017.

10. This Court in Tr.CMP No.961 of 2017 has already passed an order transferring O.P.No.760 of 2013 from the file of V Additional Family Court, Chennai to Principal Judge, Family Court, Chennai. The learned Principal Judge, Family Court, Chennai, on receipt of the bundles, shall comply with the directions of this Court issued in CRP (PD) No.3614 of 2015 dated 12.12.2016 and decide I.A.No.327 of 2014 in O.P.No.760 of 2013 within a period of two weeks from the date of receipt of bundles.

11. The Civil Revision Petition is disposed of with the above observations and directions. No costs. Consequently, connected civil miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

Speaking / Non-speaking order

Note : Issue order copy on 11.04.2019

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To

The V Additional Judge
V Additional Family Court
Chennai.



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M.GOVINDARAJ, J.

TK



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