

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.566 of 2018 and
CMP No.3055 of 2018

P.Saravanan @ Santhosh ... Petitioner

Vs

S.Kanimozhi ... Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the order passed by the learned Family Judge, Dharmapuri in IA.No.326 of 2017 in FC HMOP. No.128 of 2017 dated 27.12.2017.

For Petitioner : Mr.M.Abdul Razack

For Respondent : Mr.G.Jeremiah

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ORDER

This Civil Revision petition is by the respondent, husband in HMOP No.128 of 2017 on the file of the Family Court at Dhamapuri. The Challenge in this Civil Revision petition is to the order of the Family Court, dismissing an application filed by the petitioner seeking medical examination of the parties to the petition.

2. The wife sued for divorce under Section 13 (i-a) (i-b) of the Hindu Marriage Act in HMOP No.128 of 2017. In the petition filed, several allegations were made including impotency, mental instability on the part of the husband. It was also claimed that the marriage was not consummated. In order to disprove the claim of the wife and to prove his stand that all was well with him, the husband filed instant application in IA No.326 of 2017 seeking medical examination of both the parties.

3. This was stoutly opposed by the petitioner on various grounds.

The learned Family Judge, Dharmapuri on a erroneous appreciation of law

relating to medical examination, dismissed the application. Aggrieved, the husband has come up with this revision.

4. I have heard Mr.M.Abdul Razack, learned counsel appearing for the petitioner and Mr.G.Jeremiah, learned counsel appearing for the respondent.

5. Mr.M.Abdul Razack, learned counsel appearing for the petitioner would draw my attention to the allegations made in the original petition for divorce and submit that in the light of such allegations which can be disproved only with the aid of medical evidence. The trial Court was not justified in dismissing the application.

6. Contending contra, Mr.G.Jeremiah, learned counsel appearing for the respondent would submit that though the allegations have been made, she is not seeking divorce on any of those grounds namely impotency or mental instability or non consummation of marriage and hence medial evidence is not necessary. He would also submit that the respondent, wife

cannot be forced to undergo medical examination if against her wishes.

7. The allegations made in the original petition are very serious in nature. The respondent wife has accused the petitioner of being impotent, suffering from mental illness and guilty of non consummation of marriage. Since these allegations are very serious in nature, the husband should be provided with an opportunity to dispel or disprove these allegations before the Court. From the very nature of the allegations, it could be concluded that they can be disproved only through medical evidence. Courts should not prevent a party from letting in the best evidence to enable it to adjudicate upon the dispute effectively. A hyper technical approach as adopted by the trial Court will only, in my considered opinion, lead to injustice rather than aiding justice. If the respondent wife is unwilling to cooperate for a medical examination, it is for the Court to decide whether to draw an adverse inference against her for her non-cooperation or not. But at the same time, the Court cannot deny an opportunity to the petitioner to let in evidence.

8. I am, therefore of the considered opinion that the order of the

trial Court deserves to be set aside and it is accordingly set aside. The Family Court will refer the petitioner husband to the Medical Board at the Government Medical College Hospital, Dharmapuri, have him examined with reference to the allegations made in the petition and seek the report of the Medical Board before proceeding with the case further.

9. Insofar as the respondent is concerned, it is open to her to either subject herself to medical examination or face the risk of the Court drawing an adverse inference against her depending on the evidence that is placed before the Court at trial. The Civil Revision petition is disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

07.10.2020

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Index: Yes/No

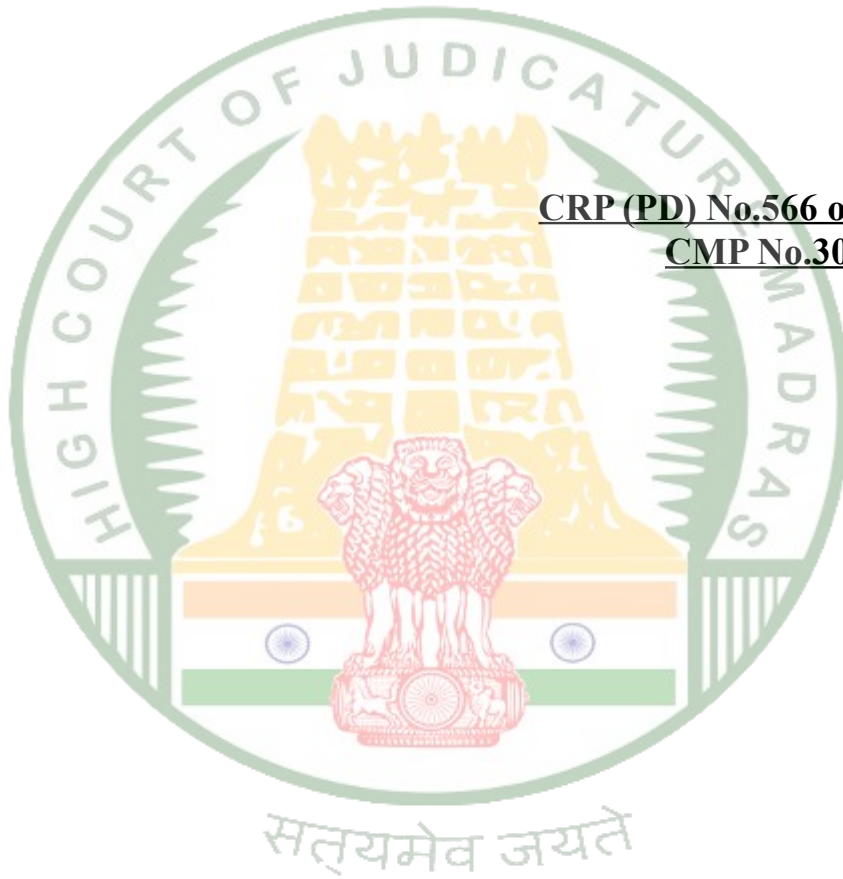
Speaking order / Non speaking order

To

The Family Judge, Dharmapuri

R.SUBRAMANIAN, J.

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