

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1044 of 2018

Date of Decision: 30.01.2020

Manoj

.....Petitioner

Vs.

Reeta and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. B.R. Mahajan, Senior Advocate, with
Mr. Deepak Thapar, Advocate,
for the petitioner.

Mr. Deepak Girotra, Advocate,
for respondents no. 1 and 2.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order passed by the learned Principal Judge (Family Court) on 01.02.2018, dismissing the application filed by the petitioner before that court, seeking that respondent no. 1 herein, i.e. the wife of the petitioner, be got examined in the Department of Psychiatry in the PGIMER, Chandigarh (erroneously mentioned as the PGIMS, Chandigarh, in the impugned order), as the contention of the petitioner is that she suffering from a psychiatric disorder, which is the ground sought by him for seeking nullity of the marriage between the parties, in terms of Section 12 of the Hindu Marriage Act, 1955.

A reply having been filed to the said application by respondent no. 1, Mr. Mahajan, learned senior counsel appearing for the petitioner, has pointed out that nowhere in the reply has the examination itself been opposed and in fact in the prayer clause, it has been stated that the examination may be conducted not at the PGIMER Chandigarh but instead at the PGIMS, Rohtak, on the ground that the

respondents' father (with her seemingly wanting him to accompany her), being an old person but still the only bread earner for the family, would then have to take leave to travel to Chandigarh.

Mr. Mahajan further submits that as a matter of fact, as per the petitioner, the said respondent was under treatment at the PGIMS, Rohtak, in the Department of Psychiatry, but because her father was working in the Maharshi Dayanand University, Rohtak, the case file of her treatment, obviously in collusion with hospital officials, went missing (as alleged), and therefore a request had been made that the examination be conducted in the PGIMER, Chandigarh, which examination itself was in fact not even opposed by respondent no. 1.

In that context, he points to the last paragraph of the reply filed by respondent no. 1 to the petitioners' application, which reads as follows:-

“In reply to prayer para it is submitted that due to reasons mentioned in para no. 6 of this reply the answering respondent is not at all ready to get herself check by the Board of Doctors of Psychiatric Department PGIMER, Chandigarh, however, the answering respondent has no objection to get herself check by the board of doctors at PGIMS, Rohtak, subject to the condition that expense for the same, if any will be borne by applicant/petitioner.”

Learned counsel for the respondent-wife on the other had submits that in the said reply the respondents' stand throughout had been that she is not suffering from any psychiatric problem and and in fact she had never taken any medicines for schizophrenia or other psychiatric disorder; and further, that the petitioner having good relations/contacts with doctors in the PGIMER, Chandigarh, had obtained false and fabricated documents to that effect from there, and consequently he could still exercise influence at Chandigarh (to obtain a

wrong opinion) from the hospital there.

Learned counsel for respondent no. 1 has very vehemently opposed that the impugned order be set aside, with the learned trial court having observed that in fact the application was filed at the fag end of the evidence being led, with the petitioner unable to prove any psychiatric problem with respondent no. 1, it has also been observed by that court that in any case the court cannot direct parties to collect evidence for each other and therefore the application could not be allowed.

Learned counsel for respondent no. 1 further submits that in fact not even the doctors of the PGIMER Chandigarh were sought to be examined by the petitioner in support of any documentary evidence produced by the petitioner, to try and prove that respondent no. 1 was suffering from any psychiatric problem for which she was under treatment in that hospital.

Having considered the matter even after the aforesaid contention raised by learned counsel for respondent no. 1, in my opinion, the sole ground on which nullity of the marriage is sought in terms of Section 12 of the Act of 1955, read with Section 5(ii) (a) thereof, (as is not denied by learned counsel appearing on either side), being that respondent no. 1 is suffering from a mental illness, though learned counsel for respondent no. 1 is otherwise correct in contending that that fact was for the petitioner to prove, yet the application itself actually never having been opposed before the learned trial court, to the extent that respondent no. 1 did not oppose getting herself examined, though not at the PGIMER, Chandigarh but at the PGIMS, Rohtak, I would find no reason to not actually get the examination done. However, in view of the fact that allegations are being made one against the other to the effect that one party has influence in one hospital and the other in the other hospital, without making any adverse comment whatsoever on the ability to influence doctors in either hospital, simply for an opinion on the

issue to be obtained from a Board of Doctors in a hospital over which no controversy has been raised, the petition is allowed, with the impugned order set aside.

Respondent no. 1 would be got examined from the Department of Psychiatry in the All India Institute of Medical Sciences, New Delhi, with the Head of the Department of Psychiatry in that hospital requested to kindly constitute an appropriate Board of Doctors for examination of respondent no. 1 as regards her mental condition; and to thereafter submit the report of the Board, upon such examination, to the trial court at Rohtak, within a period of three months from today.

Consequently, respondent no. 1 would appear with a copy of this order before the Head of the Department of Psychiatry, All India Institute of Medical Sciences, New Delhi, on 12.02.2020, after which she would be given a date to appear before the Board of Doctors constituted there.

Naturally, all the expenses borne by the said respondent for such examination would actually be reimbursed by the petitioner, upon her providing the details of such expenses to the learned trial court.

Upon the report of the learned Board of Doctors being presented to the trial court, it would grant one effective opportunity of examining one of the doctors constituting the Board, if the petitioner makes an application immediately thereafter for that purpose.

The petition is allowed in the aforesaid terms.

January 30, 2020

nitin/dinesh

Whether speaking/reasoned

Whether Reportable

(AMOL RATTAN SINGH)

JUDGE

Yes

No.