

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :16.03.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.106 of 2021 and
C.M.P.No.995 of 2021

Annapoorani

... Petitioner

Vs.

S.Ritesh

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the petition in O.P.No.4784 of 2019 on the file of III Additional Family Court, Chennai and pass further orders.

For Petitioner : Ms.S.P.Arthi

O R D E R

The present Civil Revision Petition has been filed under Article 227 Constitution of India with the prayer to strike off the petition in O.P. 4784 of 2019 on the file of III Additional Family Court, Chennai on the ground that the invocation of Section 12(1)(a) of the Hindu Marriage Act is not sustainable by raising various grounds.

2. The present Civil Revision Petition has been filed by the wife as against the petition in O.P.No.4784 of 2019 filed by the respondent / husband before the said Family Court. The respondent / husband has filed the Original Petition before the Family Court against the petitioner / wife herein on the ground that the respondent / wife is suffering from Polycystic Ovarian Syndrome (for brevity 'PSOS') and the respondent / wife was not fit for cohabitation or give birth to a child. Apart from that, he has also raised many other issues, instances as against the wife for seeking declaration declaring that the marriage solemnized on 01.07.2018, which was subsequently registered on the same day, vide Sl.No.95 of 2018 before the Marriage Registrar, Joint II, Saidapet, Chennai - 15, as null and void.

After filing this petition, the respondent / husband has also filed an I.A. 1 of 2020 seeking for an amendment to include the provision of law from 12(1)(a) and 12(1)(a) and (c). The said petition seeking for amendment is pending before the Family Court for decision.

3. Ms.S.P.Arthi, leaned counsel appearing for the petitioner vehemently contended that the petition filed before the Family Court by the respondent / husband cannot be sustained, as the same is pure abuse of process of Law. She would also state that the facts pleaded before the Family Court under Section 12(1)(a) of the Hindu Marriage Act cannot be sustained and ought to be rejected at the threshold. The main strength of the argument put forth by the said counsel is that 'PSOS' disorder is endocrine system disorder that affects the capacity of the reproduction in women and which is totally distinct and different from claiming to be impotence. Having the respondent / husband choose to invoke a petition under Section 12(1)(a) on the ground that the petitioner / wife is incapacitated for giving birth to a child, the respondent / husband also claim that the 'PSOS' is to be impotency and sought the declaration of the marriage that took place between the petitioner and the respondent on 01.07.2018 as null and void.

4. According to the learned counsel for the petitioner, the said claim made by the respondent / husband is absolutely incorrect and the said usage of terminology of impotency as against the petitioner / wife, cannot be sustained and on this ground, she prays for striking off the petition filed by the respondent / husband in O.P.No.4784 of 2019.

5. Heard the learned counsel for the petitioner in length and perused the materials available on record.

6. It is to be noted that the petitioner herein had approached this Court seeking to strike off the petition under Article 227 of the Constitution of India on the alleged facts which are pleaded in O.P.No.4784 of 2019 before the Family Court, Chennai . She also claims that she wedded to the respondent / husband on 01.07.2018, as per the Hindu Marriage Act and the same is the arranged marriage; arranged by the parents, elders and well-wishers of both the parties. However, the said marriage did not last long on the alleged ground of physical condition that the petitioner / wife cannot give birth to a child, as alleged by the husband, owing to 'PSOS' on the part of the wife.

7. On a careful perusal of the said petition filed before the Family Court, Chennai, it is seen that the respondent . husband has narrated various facts apart from the issue of 'PSOS' which he relies most as a ground for seeking divorce. It is also seen that the respondent / husband has made categorical allegation that the petitioner / wife is suffering from 'PSOS' due to which' her menstrual cycle will extend for more than 25 days and she is under medication ever since the date of puberty.

8. The issue of 'PSOS', which is now commonly prevailing among the present generation of women due to various habits, such as, mental stress and to a very great extent, the contaminated environment, in which we live, is also one of the cause for particular women, who develop this physical problem. The term 'PSOS' by itself cannot be termed as 'impotency'. Impotency is different and unable to give birth to a child is different, owing to various physical and mental reasons.

9. On a careful perusal of the entire pleadings in a petition filed by the respondent / husband, it is clear that he has not pleaded that the wife's inability to give birth to a child as 'Impotency', but he seeks for annulment of a marriage on the reason that there was no cohabitation and wife could not bear a child. In fact, he has also pleaded that the wife has not co-operated for cohabitation owing to her medical condition, as she was almost 25 days on her menstrual cycle. The marriage being a bondage between men and women as husband and wife, it not only limits to a biological needs and desires, but also as a companion in life caring forward to the next generation through their children. This bondage is a factor, through which, we are living in this world for centuries. However, the concept of marriage in the present generation are taken very lightly and even for trivial issues, they file divorce and marriage is broken. That is why the Family Courts increase in numbers to cater the demand of intolerant couple, who are unmindful of the institution of marriage, break the relationship on unimaginable trivial reasons.

10. As far as as the present case on hand is concerned, on going through the entire pleadings it is clear that the respondent / husband has not spelt out any single word connating impotency towards his wife/ petitioner herein. But he has approached the Family Court mainly on the issue complaining that his wife/ petitioner herein could not bear a child on two reasons, viz., firstly, there is no cohabitation, secondly, the wife is suffering from 'PSOS' due to which the said wife suffer a improper menstrual cycle. At this stage of the case, the petiitoner / wife has filed the present Civil Revision Petition, who has not filed any counter to the said allegation.

11. With regard to invocation of Article 227 of Constitution of India is concerned, it is only a supervisory jurisdiction of the High Court on its Subordinate Courts and in several cases, Hon'ble Supreme Court as well as this Court have confirmed that when the suit filed on frivolous fact and when there is an abuse of process of law, the court can extend its power strictly and if on plain reading of the plaint, it shows abuse of process of law, the court can intervene. The supervisory jurisdiction of

this Court can be invoked only when there is manifest error committed by the Subordinate court and the said arguments of the petitioner's counsel does not come under the said reason and the same will not fall under realm of exercising the power under Article 227 Constitution of India, as the respondent / husband contrary to the submissions made by the learned counsel petitioner, has not made any allegation in the petition with regard to the impotency of the petitioner / wife.

12. It is an legitimate expectation of the husband to live with his wife and have cohabitation and bear children and if the same is not achieved owing to any physical and mental problem among the partners, it is quite logical that either of the parties will approach the court for seeking divorce on such allegations. Except in few cases, where the couple understand eachother and come forward with the life issue-less or even go for adoption, however, the same has to be proved by the person claiming that his or her partner is incapacitated to give or bear the child. But in the case on hand, the petitioner is not in a position to show that there is no cause of action disclosed by the averments made in the petition filed by the husband / respondent or that the cause of action disclosed by the averments made in the petition is not natural, but illusive.

13. Under these circumstances, it could be seen that the petitioner has not made out any grounds seeking for intervention of this Court under Article 227 of the Constitution of India to strike off the petition in O.P.No.4784 of 2019 on the file of III Additional Family Court, Chennai. Accordingly, the Civil Revision Petition does not even merit admission and the same is liable to be dismissed at the threshold and the same is dismissed. The learned III Additional Judge, Family Court, Chennai shall proceed on merit in the said H.M.O.P.No.4784 of 2019 uninfluenced by the observations made by this Court in the present Civil Revision Petition.

In the result, the present Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

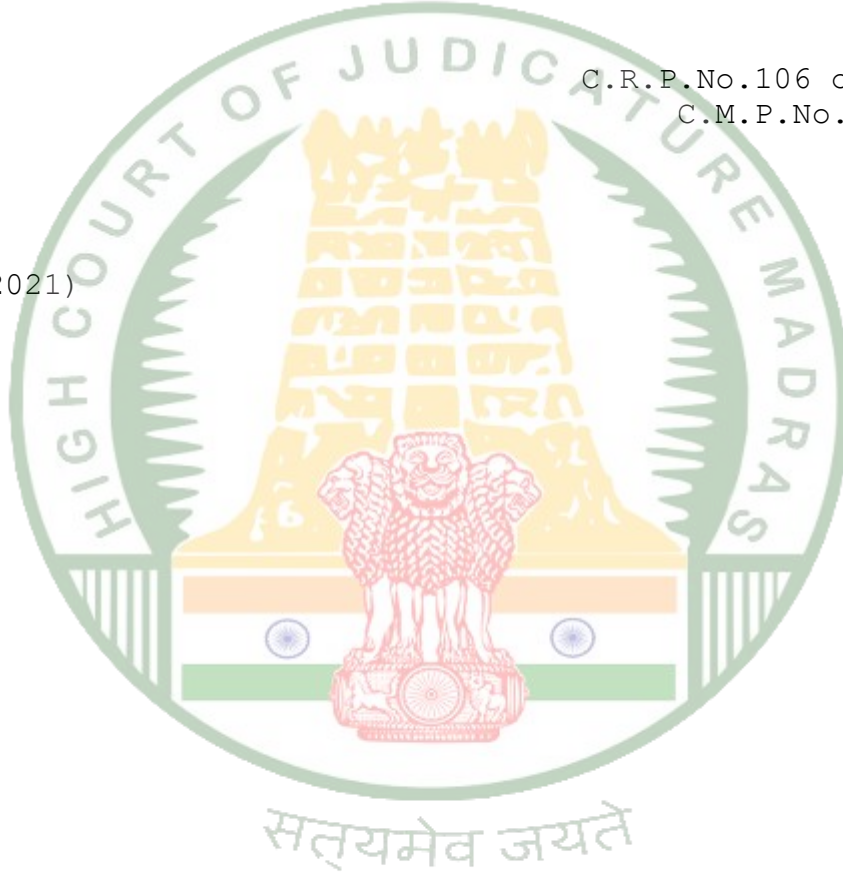
ssd
To

1. The III Additional Judge,
Family Court, Chennai
2. The Section Officer,
V.R.Section,
High Court, Madras

+1 CC to M/s.S.P. Arthi, Advocate sr 17078.

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AKII (CO)
SP (15/04/2021)



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