

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.426 of 2021
and
C.M.P.No.3702 of 2021

L.Sethuraman

... Petitioner

Vs.

G.Maithili

.... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 11.02.2021 passed in I.A.CFR.No.388 of 2021 in H.M.O.P.No.90 of 2015 on the file of the Family Court, Erode.

For Petitioner : Mr.A.Thiyagarajan, Senior Counsel
For M/s.A.Vinu Pradha

ORDER

This Civil Revision Petition is filed against the docket order dated 11.02.2021 passed in I.A.CFR.No.388 of 2021 in H.M.O.P.No.90 of 2015 on the file of the Family Court, Erode.

2. The said I.A. was filed by the petitioner herein to reopen the case for the purpose of enabling him to complete the pending potential tests and getting medical report from the Madras Medical College Hospital. Earlier the petitioner had filed two applications in I.A.Nos.1 and 2 of 2019 before the Court below. The I.A.No.1 of 2019 was filed to reopen his side evidence to go for lab test and file a report, and the I.A.No.2 of 2019 was filed to permit him to take "Regiscan" lab test at Meenakshi Medical Mission Hospital, Madurai and file a report. Both the applications were disposed of by the Court below on 28.08.2019 and the petitioner was directed to undergo "Regiscan" lab test on 08.11.2019. The petitioner had approached the Medical Board regarding the Regiscan lab test and he was informed that the test would be taken only as per seniority and the same can only be taken on 1st week of December. Later, the petitioner had undergone the first test (i.e) Preliminary

Examination Blood, HIV and Sperm test on 02.12.2019 and he filed a memo to that effect before the Court below on 12.12.2019. Thereafter, due to Covid - 19 pandemic, the petitioner was unable to continue the further test. Hence, the petitioner's side evidence was closed on 18.12.2020 and the matter was posted for further hearing on 09.02.2021.

3. Aggrieved by the order dated 18.12.2020. the petitioner has filed I.A.CFR.No.388 of 2021 to reopen the case for completing the pending potential tests and filing a report before the Court below. But the Court below has dismissed the said I.A. on the ground that the petitioner had not reported whether he undertook the further potential tests and that the application for reopening his side evidence was filed by a third party / Advocate Clerk. As against the said order, the petitioner has filed this Civil Revision Petition before this Court.

4. The learned counsel for the petitioner submits that as per the instructions of the Medical Board, the tests will be taken only by seniority basis and also it will be taken periodically for 3 times. The petitioner has already completed the first test in the 1st week of December 2019 and thereafter due to Corona situation he was unable to continue the further test.

5. The learned counsel for the petitioner further submits that after the normal situation in the hospital, the petitioner has taken Penile Doppler Test and other tests, and now the petitioner has to undergo two more tests i.e. Cardiology and Typology, and seeks time to produce a report before the Court below.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. It is seen from the records that as per the direction of the Court below, the petitioner had undertaken the potential tests in the month of December 2019 and thereafter due to Covid -19 pandemic he was unable to continue the further tests and submit a report before the Court below. The petitioner could have appeared before the Court and reported the same stating that due to Covid situation, the Medical Board was unable to take further test. But he has not done so and also he has filed the above application for reopening of evidence by a third party / Advocate Clerk and the same cannot be accepted. This Court deprecates the action of the petitioner who has filed the application by a third party / Advocate Clerk and the Court below has rightly dismissed the application on the said ground.

8. However, since this case being a matrimonial issue, this Court is inclined to give one more chance to the petitioner to go for further medical test and file a report before the Court below, by imposing a cost of Rs.20,000/-.

9. Accordingly, the petitioner is directed to pay a sum of Rs.20,000/- to the respondent / wife within a period of two weeks from today i.e. 02.03.2021 and further he is directed to take all the remaining tests on or before 31st March 2021 and file a report before the Family Court, Erode on 1st April 2021. On receipt of the payment of Rs.20,000/- and the report of the Medical Board, the Family Judge, Erode is directed to consider the report filed and arguments of both parties shall pass orders accordingly.

10. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

raja

To

The Judge,
Family Court,
Erode.

+1cc to Mr.A.Vinupradha, Advocate Sr.12851

C.R.P.No.426 of 2021

and

C.M.P.No.3702 of 2021

WEB COPY

gp[col]
srg 22/03/2021