

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.2290 of 2016
and CMP.No.11876 of 2016

N.Pushpakaran

..Petitioner

Vs.

P.Dhanalakshmi

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 20.04.2016 made in IA.No.401 of 2016 in OP.No.4254 of 2010 on the file of the learned Principal Judge, Family Court, Chennai.

For Petitioner : Mr.R.Krishnaswamy

For Respondent : Mr.M.Ganesan
for Mr.Pitty Parthasarathy

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ORDER

This Civil Revision Petition is arising out of fair and decreetal order dated 20.04.2016 made in IA.No.401 of 2016 in

OP.No.4254 of 2010 on the file of the learned Principal Judge, Family Court, Chennai thereby allowed the petition to direct the Dean of Government Hospital, Chennai to do medical examination of the petitioner about his potency.

2. The petitioner filed petition seeking divorce as against the respondent herein on the ground of cruelty. During the pendency of the petition, the respondent filed two petitions seeking interim maintenance as well as return of sreedhana articles including jewels. In both the applications she did not even whisper about the allegation that after their marriage, marriage itself not consummated only for the reason the petitioner has no potency to have physical relationship with the respondent herein. In fact, she also filed counter in the divorce petition, in which also she also did not whisper about his potency. After examining the petitioner as PW1, all of sudden the respondent filed petition after period of six years to send the petitioner for medical examination for medical report in respect of his potency for physical relationship with the respondent herein. In fact, on perusal of the affidavit filed in support of the petition in paragraph 6, she stated as follows:

I further submits that my parents with great financial difficulties performed my marriage with the

respondent / petitioner. Hence I did not inform them that the respondent / petitioner never consummate the marriage with me except ear ring, nose ring, ½ sovereign Mangalyam and Nana Kuzhas, Eventhough the respondent / petitioner's parents know the non-capacity of the respondent / petitioner to consummate the marriage, they fully suppressed the same to me and my parents and thereby they totally spoiled my life. Suppressing a fact that the respondent / petitioner have no physical capacity to consummate the marriage with me, married me. Now he filed this Divorce petition against me on false allegations. In my counter in OP.No.4254 of 2010 and in my other interim maintenance application and Return of Articles and Jewels application, etc., and also before the Criminal Court and Police Stations, I did not disclose about the respondent / petitioner that he did not consummate the marriage with me. Because I have prepared myself to live with the respondent / petitioner eventhough he did not consummate the marriage due to his non-capacity. Taking advance of my Silence, the respondent / petitioner and his parents imposing false allegations against me.

3. Accordingly, she herself admitted that she did not disclose about the petitioner's potency since she has prepared herself to live with the petitioner eventhough she did not consummate the marriage due to his non capacity. Therefore, it is nothing but only to drag the proceedings and nothing else. Without considering the same, the court below allowed the petition.

4. In view of the above discussion, the order passed by the court below is perverse and contrary to the facts. Accordingly, this civil revision petition is allowed and the order dated 20.04.2016 made in IA.No.401 of 2016 in OP.No.4254 of 2010 on the file of the learned Principal Judge, Family Court, Chennai is set aside. Further, the trial court is directed to complete the trial in OP.No.4254 of 2010 within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

21.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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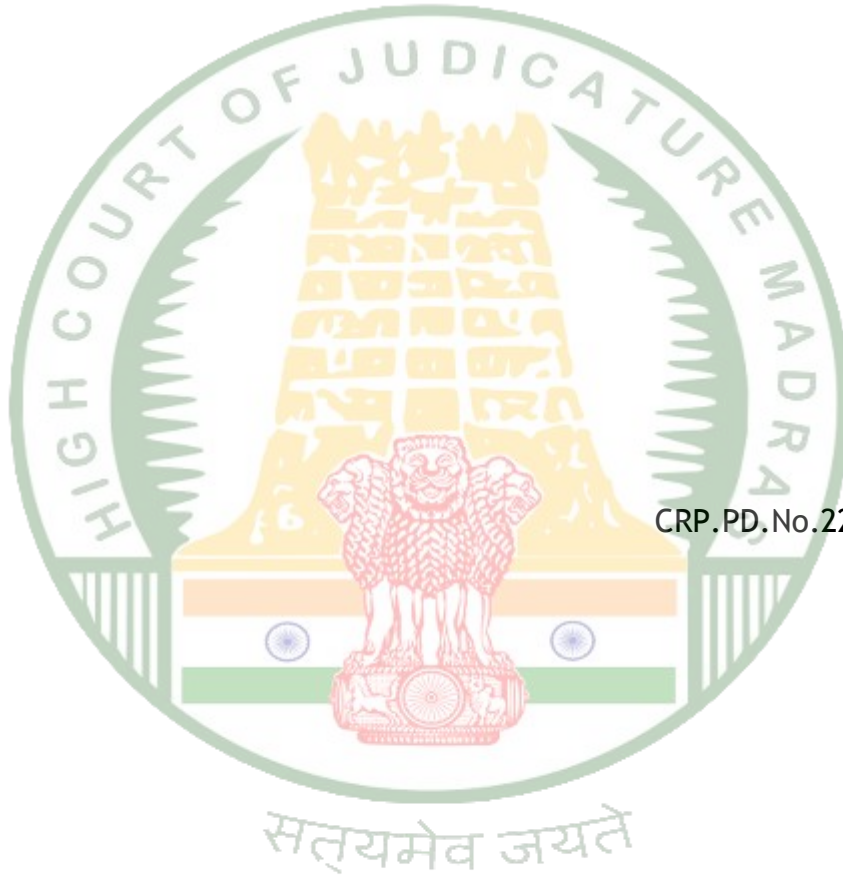
The Principal Judge, Family Court,
Chennai.



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G.K.ILANTHIRAIYAN,J.

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