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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(PD).No.193 of 2017

[video conferencing]

Kuppusamy

...Petitioner

Vs.

Nirosha @ Rosi

...Respondent

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the dismissal order dated 02.09.2016 passed in H.M.O.P.No.89 of 2013 by the Sub Judge, Mettur and consequently, directing the petitioner to conduct medical test to test his potency and the respondent to conduct the medical test to test her virginity.

For Petitioner : Mr.T.Ganesan

O R D E R

This Civil Revision Petition is filed to set aside the dismissal order dated 02.09.2016 passed in H.M.O.P.No.89 of 2013 by the Sub Judge, Mettur and consequently, directing the petitioner to conduct medical test to test his potency and the respondent to conduct the medical test to test her virginity.

2.The petitioner in H.M.O.P.No.89 of 2013 is the revision petitioner herein.

3.Brief facts of the case are as follows:

The respondent herein has filed a petition in H.M.O.P.No.89 of 2013 before the Sub Court, Mettur for dissolution of marriage between the petitioner and the respondent. During the pendency of the petition, the revision petitioner herein has filed an application in I.A.No.43 of 2015, before the Sub Court, Mettur, for directing the petitioner herein to conduct medical test to



test his potency and the respondent to conduct the medical test to test her virginity and the same has been dismissed. As against which, the revision petitioner has filed the present Civil Revision Petition seeking to set aside the same.

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4.It is submitted by the learned counsel for the petitioner that the respondent has filed H.M.O.P.No.89 of 2013 against the petitioner for dissolution of marriage on the ground of cruelty. It is submitted that the respondent herein has not co-operated for the sexual intercourse and avoided the same. Based on the above allegation and other allegations, H.M.O.P.No.89 of 2013 has been filed.

5.It is submitted by the learned counsel for the petitioner that the petitioner has filed a detailed counter about his potency and further stated that he is ready for medical examination and also sought for medical examination to be conducted for the respondent herein.

6.The learned counsel for the petitioner would further submit that the petitioner herein has filed a petition for medical examination to be conducted for the petitioner and the respondent in I.A.No.43 of 2015 and the same was dismissed on the ground that there is no specific allegation with regard to the impotency of the petitioner herein and also virginity of the respondent. Further, the Trial Court has dismissed the petition on the ground that the petition is pending part heard.

7.On perusal of the petition filed by the respondent herein in H.M.O.P.No.89 of 2013, it has been specifically stated that the petitioner herein is avoiding for sexual intercourse. Further, in the counter filed by the petitioner herein has specifically denied the alleged impotency. In such circumstances, the Trial Court ought to have allowed the petition in I.A.No.43 of 2015 for medical examination of the petitioner and the respondent herein. No prejudice would be caused to the respondent by allowing this petition. Hence, this Court is inclined to allow this petition.

8.The impugned order passed in I.A.No.43 of 2015 dated 02.09.2016 by the Sub Court, Mettur is set aside and the matter is remitted back to the Trial Court with a direction to appoint Advocate Commissioner as Mediator to conduct medical examination with regard to the potency test of the petitioner and also with regard to virginity test of the respondent after issuing notice to the parties and submit the Report. On receipt of the report, the Trial Court is directed to dispose of main H.M.O.P.No.89 of 2013 on merits in accordance with law as expeditiously as possible.



9. With the above direction, this Civil Revision Petition is allowed. No costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssi

To

The Sub Court,
Mettur.

C.R.P. (PD) .No.193 of 2017

SPD(CO)
RGA(21/12/2021)