

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

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

C.R.P.(PD) No.4376 of 2017
and C.M.P.No.20799 of 2017

Dhanalakshmi ... Petitioner

Vs.

Rajkumar ... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 14.09.2017 made in I.A.No.203 of 2017 in H.M.O.P.No.69 of 2016 on the file of the Family Court, Villupuram.

For Petitioner : Mr.V.S.Sivsundaran
For Respondent : Mr.R.Meenal

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 14.09.2017 passed by the learned Judge, Family Court, Villupuram, in I.A.No.203 of 2017 in H.M.O.P.No.69 of 2016, allowing the petition to subject the petitioner for medical examination.

2. The petitioner is the wife and the respondent is the husband. The respondent filed divorce petition in HMOP.No.69 of 2016 for divorce on the ground of cruelty and desertion. The petitioner also filed petition for restitution of conjugal rights. While pending the divorce petition, the respondent filed petition for appointment of Advocate Commissioner to take the petitioner for medical examination for the reason that the respondent is affecting with disease called psoriasis. It is serious one and it is not at all curable one. The petitioner resisting the same filed counter stating that when the petition for divorce filed on the ground of cruelty and desertion, no purpose would be served for sending the petitioner for medical examination and it would cause serious prejudice to the petitioner.

3. On perusal of the petition filed for divorce revealed that the respondent filed the said petition on the ground of cruelty and desertion. Though the respondent averred in his petition that the petitioner is suffering from skin disease as such the marriage itself not yet commensurate between them. Further stated that, the disease is in serious condition and there is no possibility for curing. Even then, the respondent failed to file petition for

divorce under Section 13(1)(iv) of Hindu Marriage Act. Even assuming that the respondent filed petition for divorce under Section 13(1)(iv) of Hindu Marriage Act, the party should have been suffering from a virulent and incurable form of leprosy. Therefore the skin disease would not coming under the purview of sub-section (iv) of 13(1) of Hindu Marriage Act. When it being so, the petitioner need not to subject for any medical examination to prove the case of the respondent herein, when it is filed on the ground of cruelty and desertion. Therefore, the order passed by the Court below is perverse and liable to be set aside.

4. In view of the above discussions, the order dated 14.09.2017 passed by the learned Judge, Family Court, Villupuram, in I.A.No.203 of 2017 in H.M.O.P.No.69 of 2016, is hereby set aside and this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

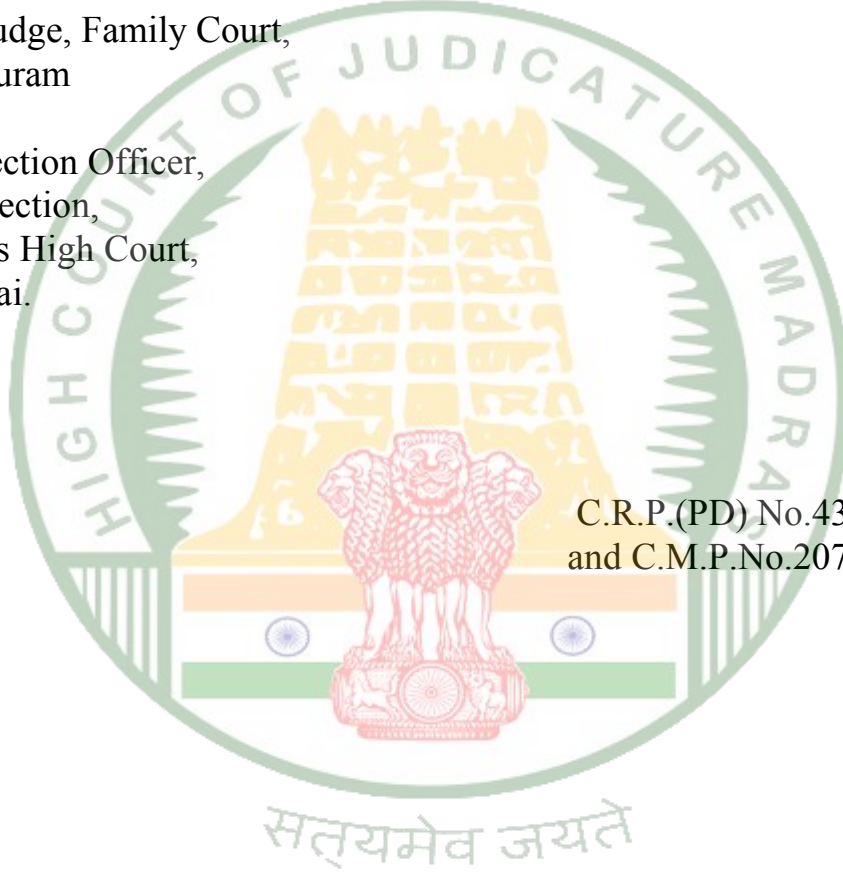
Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
rts

G.K.ILANTHIRAIYAN, J.

rts

To

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



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