

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6573 OF 2022

SATISH PANDURANG DAHIPHALE
VERSUS
PRATIBHA SATISH DAHIPHALE

...
Advocate for Petitioners : Mr. Umakant U. Wagh
...

CORAM : MANGESH S. PATIL, J.

DATE : 28.06.2022

PER COURT :

The petitioner is the husband of the respondent. He has filed a petition for divorce *inter alia* on the ground that she is differently abled and the fact was not disclosed before solemnization of marriage.

2. He submitted an application (Exhibit-58) and requested the Court to direct her to undergo a medical examination at the Civil Hospital, Ahmednagar. By the order dated 21.11.2020 the trial court allowed that application, directed her to appear before the Doctor at the Civil Hospital, Ahmednagar and also directed a physical examination to ascertain the alleged disability. Pursuant to such direction, she appeared before the Civil Surgeon at the General Hospital, Ahmednagar who issued a certificate dated 16.03.2021 certifying that she had no disability.

3. The petitioner once again moved application (Exhibit-74) and raised issue concerning the legality and appropriateness of the certificate issued by the Civil Surgeon and once again requested to issue a direction to

the respondent and the Civil Surgeon to undertake a fresh examination and once again certify about the disability.

4. By the order under challenge, the trial court has refused to concede to the request and has rejected the application (Exhibit-74).

5. The learned advocate for the petitioner submits that examination of the respondent ought to have been undertaken by the Medical Board as contemplated under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He also refers to the decision of the Supreme Court in the matter of **State of Uttar Pradesh & Ors. Vs. Ravindra Kumar Sharma & Ors.; (2016) 4 SCC 791**.

6. I have carefully considered the submissions and the papers.

7. Going by the fact that already an exercise was undertaken on a request being made by the petitioner whereby the respondent was referred to the Civil Surgeon for physical examination for certification regarding disability. Not only the respondent but even the petitioner suffered that order and the physical examination was undertaken by the Civil Surgeon certifying that there was no disability.

8. Perhaps not satisfied with the report the petitioner once again made a request to undertake the same exercise which the trial court has refused to consider.

9. It is apparent that the petitioner is taking a chance. Once having obtained a direction and the Civil Surgeon having undertaken physical examination and certified that she was not suffering from any

disability, the petitioner is repeating the same request.

10. Reliance of the petitioner in the provisions of the aforementioned Act and the decision of the Supreme Court is misplaced. It was a matter of public employment wherein the direction of the High Court for physical verification by the authorities prior to fresh medical test was held to be erroneous and direction was issued to the State Government for constitution of a fresh medical board in order to verify and assess the disability of the candidates. The matter in hand is not pertaining to any employment. The petitioner is seeking divorce on the ground that in spite of being physically challenged, the respondent had not disclosed that fact to him before the marriage. She was subjected to a medical examination at his instance. The report being not in his favour, he has once again requested to undertake another examination. The course being sought to be adopted by the petitioner, if allowed, the matter would be unending. Once having suffered the earlier order he cannot now be permitted to reprobate and challenge the constitution or the ability of the Civil Surgeon to certify about the disability. There is no illegality in the order.

11. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)