



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

Coram

The Hon'ble Mr. Justice **N.SESHASAYEE**

C.R.P. (PD) No.569 of 2022
and C.M.P. No.3017 of 2022

J.Vignesh

.. Petitioner

Vs

P.Vijayalakshmi

.. Respondent

Civil Revision Petition filed under Article 227 of Code of Civil Procedure against the order of IV Additional Family Court, Chennai dated 30.10.2021 made in I.A.No.3 of 2021 in O.P.No.1661 of 2020.

For Petitioner

.. Mr.R.Venkatesh

ORDER

This revision is filed by the petitioner in I.A.No.3 of 2021 in O.P.No.2076 of 2019 and O.P.No.1661 of 2020 on the file of the IV Additional Family Court, Chennai. He filed the said application for examination of his wife by a medical practitioner/expert to elicit an opinion if his wife had co-habitation with him. This was dismissed and the petitioner is before the Court.



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2. To introduce the case, the petitioner herein has laid O.P.No.2076 of 2019 for restitution of conjugal rights. Marriage *per se* is not disputed. However, the defence of the wife of the petitioner - the respondent herein is that the petitioner has quite a few mind related issue and that he is bereft of any libido and that he never shows any interest in physical relationship.

3. This was dismissed by the learned Family Court Judge on the ground that it would be impossible to state whether a woman had physical relationship with a particular person.

4. Heard the learned counsel for the revision petitioner.

5. Learned counsel for the revision petitioner submitted that besides the present O.P.No.2076 of 2019, the respondent-wife has filed H.M.O.P.No.70 of 2019 before the Principal Subordinate Judge, Tindivanam, and the same was transferred and renumbered as O.P. No.1661 of 2020 for dissolution of marriage on the ground of physical and mental cruelty and desertion. Somewhere in her pleadings, she has also alleged that the petitioner is impotent.



6. This Court is not convinced for the following reasons:

- In an application for restitution of conjugal rights, the moment marriage is admitted, it *prima facie* establishes the entitlement of the spouse seeking restitution of conjugal rights to the remedy sought. Burden is on the respondent to demonstrate to the extent probability may enhance the quality of his/her case as to why restitution may not be ordered.
- So far as the revision petitioner - husband is concerned, by seeking restitution of conjugal rights, he has already indicated that no matter how his wife is, he is willing to accept her. Therefore, it does not require any medical investigation on his wife's ability to co-habitat, or to prove if she had earlier co-habitation.

7. Therefore, this Court does not find any merit in this Revision. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.03.2022

Index:Yes/No
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Note: Issue copy of the order on 07.03.2022



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N.SESHASAYEE, J.

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To

The IV Additional Principal Judge,
IV Additional Family Court, Chennai.

C.R.P. (PD) No.569 of 2022

04.03.2022