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C.R.P.(PD).No.1151 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.R.P.PD.No.1151 of 2022
and C.M.P.No.6048 of 2022

M.Ashok

... Petitioner

VS.

P.Janani

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Order and Decreetal Order dated 18.02.2022 passed in I.A.No.151 of 2021 in H.M.O.P.No.314 of 2020, on the file of the learned Subordinate Judge, Tambaram.

For Petitioner : No Appearance

ORDER

On 25.04.2022, this Court has observed that when the case was taken up atleast thrice through the day, there was no representation for the petitioner and the matter was ordered to be posted on 09.06.2022. On 09.06.2022 also, there was no representation for the petitioner and the matter was posted today (i.e., 16.06.2022) under the caption "for dismissal".



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When the matter was taken up in the morning, one Manikandan, learned counsel requested the matter to be passed over and taken up after lunch.

When the matter was taken up after lunch, the learned counsel submitted that he is only a representing counsel and hence he is not able to present the case. As such, there is no representation for the petitioner.

2. The revision petitioner is the husband and he has filed the original petition in H.M.O.P.No.314 of 2020 for divorce.

3. On perusal of the records, it is seen that the Civil Revision Petition has been preferred challenging the order of the learned Subordinate Judge, Tambaram, dated 18.02.2022 made in I.A.No.151 of 2021 in H.M.O.P.No.314 of 2020.

4. During the pendency of the petition, an interlocutory application was filed in I.A.No.151 of 2021 to subject the child of the respondent to D.N.A. test in order to get an opinion of the expert on the paternity of the child. The said petition was dismissed. Aggrieved over that the revision petitioner had preferred this revision petition.



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5. The contention of the petitioner as seen from the grounds of the revision petition is that he is not the father of the child born to the respondent and she became pregnant before having any physical relationship with the petitioner.

6. The revision petitioner had alleged that the respondent/wife has got some illegitimate relationship with other male members. The learned trial Judge has observed that the petitioner did not substantiate the same. It is further observed that the revision petitioner himself had admitted that he had physical intimacy with the respondent on 30.04.2017, when the marriage was held between themselves. Without establishing a strong *prima-facie* doubt about the paternity of the child and without any sufficient materials to make out the allegations about illegitimate intimacy, the child cannot be subjected to D.N.A. analysis. Just because some one doubts about the paternity of the child without any basis, the child and its parent cannot be forced to undergo D.N.A. analysis. As per Section 112 of the Indian Evidence Act, the proof of the legitimacy of the child is conclusive, if the child was born during the continuance of a valid marriage between his parents unless it is proved that the parties to marriage had no access to each



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other at any time when it would have begotten.

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7. In the absence of any *prima-facie* materials to make out the doubt about the paternity of the child, the child cannot be subjected to D.N.A. test as prayed by the revision petitioner. The learned trial Judge has rightly dealt the above said issue and chosen to dismiss the petition. Hence, I find no reason for interference.

8. Hence, this Civil Revision Petition is dismissed and the Order and Decretal Order dated 18.02.2022 passed by the learned Subordinate Judge, Tambaram, in I.A.No.151 of 2021 in H.M.O.P.No.314 of 2020, is hereby confirmed. No costs. Consequently, connected civil miscellaneous petition is closed.

16.06.2022

Index:Yes / No

Speaking Order : Yes / No

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To

The Subordinate Judge,
Tambaram.



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R.N.MANJULA, J.,
ssn

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