



C.R.P.(PD)No.2354 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD)No.2354 of 2022

and

C.M.P.No.12135 of 2022

Ranjith Viswambaran

... Petitioner

..Vs.

K.G.Vineetha

... Respondent

Prayer :- Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and final order dated 21.09.2021 passed in I.A.No.162 of 2021 in H.M.O.P.No.680 of 2017 on the file of the learned Subordinate Judge, Tambaram, Kancheepuram District.

For Petitioner

: Mr.R.Balaramesh
for M/s.Swaraj Associates

ORDER

This Civil Revision Petition has been preferred challenging the order dated 21.09.2021 passed in I.A.No.162 of 2021 in H.M.O.P.No.680



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of 2017 by the learned Subordinate Judge, Tambaram, Kancheepuram District.

2. Heard the learned counsel for the petitioner and also perused the materials available on record.

3.The revision petitioner is the husband, who has filed H.M.O.P.No.636 of 2015 against the respondent/wife for the relief of dissolution of marriage on the ground of unsoundness of mind and cruelty. The respondent/wife filed H.M.O.P.No.680 of 2017 for restitution of conjugal rights. During the pendency of the said petitions, the petitioner/husband filed I.A.No.162 of 2021 in H.M.O.P.No.680 of 2017 seeking a direction of the Court to call for the case records and treatment records of the respondent/wife (patient I.D.No.0020335980) from the Sri Ramachandra Medical College and Research Institute, Porur, Chennai – 600 116 and also to examine the Medical Superintendent of the said hospital and the same was dismissed. Aggrieved over the same, the



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petitioner has filed the present revision petition.

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4. The learned counsel for the revision petitioner submitted that since the petitioner has filed a petition for divorce on the ground of unsoundness of mind and cruelty, duty is cast upon him to prove that the respondent is suffering from unsoundness of mind and hence, he is compelled to file the application to send for the medical records from the hospital.

5. It seems that the learned trial Judge has chosen to dismiss the petition by stating that the petitioner has not given the list of witnesses along with his pleadings within 15 days and filing of the application at a belated stage, would only show that the petitioner is interested in dilatory tactics. It is also pertinent to note that in the Civil Revision Petitions that was pending before this Court, a direction has been given to dispose the original petition within a time frame manner.

6. Admittedly, the petitioner has not produced any list of witnesses



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and documents along with his pleadings. No reasons are stated as to how these facts were omitted to be stated by him, despite exercising due diligence. While filing the petition for divorce on the ground of unsoundness of mind, at least some *prima facie* materials ought to have been produced before the Court, to show that the respondent has certain psychiatric issues. All psychiatric problems for which a person takes treatment, cannot fall under unsoundness of mind. It is seen that the respondent has actually participated in the proceedings and engaged an Advocate to conduct her case. At no point of time, there is any difficulty in getting signatures from the respondent or getting instructions from her for preparing the pleadings by the respondent's counsel. All these would only show that the respondent does not suffer from any unsoundness of mind. Since the petitioner had stated the ground of unsoundness of mind, the burden is on him to prove with *prima facie* materials that the respondent is a person incompetent due to unsound mind.

7. Since the original petitions are pending before the Sub Court, Tambaram, it is at the discretion of the learned Sub Judge to order for the



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appearance of the parties, during any stage of the proceedings, in order to ascertain the fitness of the respondent. Only if the Court itself records a finding that the respondent is not able to answer any questions and she did not understand the Court proceedings, the Court can believe the contention of the petitioner that the respondent is suffering unsoundness of mind. So, it is right for the learned trial Judge to dismiss the petition. But, to impose a cost of Rs.30,000/- for filing petition to produce documents, is without any basis. Hence, I feel that the order should be modified to the effect of deleting that part of the order which imposed cost.

8. In view of the above, this Civil Revision Petition is partly allowed. The order dated 21.09.2021 passed in I.A.No.162 of 2021 in H.M.O.P.No.680 of 2017 by the learned Subordinate Judge, Tambaram, Kancheepuram District is confirmed. However, the imposition of cost is



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modified and I.A.No.162 of 2021 shall stand dismissed without costs.

There shall be no order as to costs in the present revision petition.

Consequently, connected Miscellaneous Petition is closed.

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Index:Yes No

Speaking Order:Yes/No

ms

To

The Subordinate Judge,
Tambaram,
Kancheepuram District.



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R.N.MANJULA, J.

ms

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