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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4408 of 2022 (O&M)

Date of Decision: 10.11.2022

Vishal Vashisht

..... Petitioner

Versus

Nitasha Sharma

..... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Arav Gupta, Advocate
for the petitioner.

MANJARI NEHRU KAUL J. (Oral)

Prayer in the present petition filed under Article 227 of the Constitution of India is for setting aside the impugned order dated 28.07.2022 (Annexure P-8) vide which the Ld. Additional Principal Judge (Family Court), Jalandhar dismissed the application of the petitioner for appointment of a Local Commissioner for getting the expert opinion with respect to the disease, i.e., Rheumatoid Arthritis of the respondent.

Learned counsel for the petitioner while addressing arguments on the question of maintainability of the instant petition, submits that the supervisory jurisdiction of this Court under Article 227 of the Constitution of India is wider than the revisional jurisdiction under Section 115 of the Civil Procedure Code, therefore, the instant petition would be maintainable. In support thereof, learned counsel for the

petitioner has placed reliance upon the judgment passed by Hon'ble the Supreme Court in “**K.P. Natarajan and others vs. Muthalammal and others**”, SLP (C) 2492 of 2021 and “**Radhey Shyam and others vs. Chhabi Nath and others**”, Civil Appeal No.2548 of 2009.

On merits of the case, learned counsel for the petitioner submits that the impugned order suffers from patent illegality and thus, deserves to be set aside. He submits that the petitioner in his petition filed under Section 13 of the Hindu Marriage Act has categorically pleaded that the respondent was suffering from *Rheumatoid Arthritis* even prior to their marriage. Hence, the non-disclosure and concealment of her state of health and illness amounted to cruelty. He still further submits that in order to prove the fact that the respondent had been suffering from the said disease, even prior to the solemnization of their marriage, the appointment of the Local Commissioner for giving expert opinion regarding the origin/history of the disease would be necessary for the just and effective adjudication of the petition filed under Section 13 of the Hindu Marriage Act.

Learned counsel still further submits that the petitioner has a right to prove his case by leading cogent evidence and hence, the appointment of the Local Commissioner would be necessary, which fact has been erroneously ignored by the learned Family Court while passing the impugned order.

I have heard learned counsel for the petitioner and perused the relevant material on record.

It would be pertinent to notice that the Division Bench of this

Court in “**Pritam Singh vs. Sunder Lal**”, 1990 (2) PLR 191, has held that a revision against an order refusing to appoint a Local Commissioner would not lie as it is the discretion of the Court to appoint a commissioner and in case the Court refuses to appoint a commission, then, no right of any party can be said to have been prejudiced.

The case laws relied upon by learned counsel for the petitioner would not come to his rescue as in the present case, the impugned order refusing the appointment of the Local Commissioner, neither any issue has been decided, nor the rights of the parties adjudicated. Hence, the impugned order is not revisable.

Even otherwise, it is trite law that a party cannot be allowed to collect evidence through the Court. Each party has to lead evidence in support of its case and it cannot be allowed to lean on the Courts for the same. Furthermore, the Local Commissioner cannot be permitted to perform medical test upon the respondent without her consent as it would without a doubt amount to violation of her right to privacy.

As a sequel to the above, this Court is not inclined to invoke its revisional jurisdiction under Article 227 of the Constitution of India. The petition being devoid of merit is dismissed.

10.11.2022

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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No