



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 755 OF 2024

(RAKESH SITARAM SAKHARWADE..VS.. MEGHA RAKESH SAKHARWADE)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.B.Mohta, Advocate for Petitioner.
Shri Vaibhav A. Dahiwale, Adv h/f. Shri R.R.Bagade, Adv. for Respondent.

CORAM : ANIL S. KILOR, J.

DATED : APRIL 08, 2024.

1. Heard.
2. The order, dated 18/12/2023 passed below Exh.24 by the Judge, Family Court, Bhandara rejecting the application filed by the petitioner for direction to the Medical Board to submit report of medical examination conducted of the petitioner and the respondent and supply it to the petitioner, came to be rejected, which is under challenge in this writ petition.
3. The petitioner approached the Family Court by filing a petition under Section 12(1)(c) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act of 1955") seeking decree of nullity of marriage dated 10/07/2016 performed between the petitioner and the respondent.
4. In the petition certain allegations about gynecological problem of the respondent were pleaded and to the limited extent it was admitted by the respondent in her written statement.

5. Then, the application under Order 26 Rule 10-A of the Code of Civil Procedure was moved by the petitioner for referring the respondent to the Doctor for medical examination and for calling report. However, the learned Family Court, in exercise of powers under Section 12 of the Family Courts Act, 1984, referred both the parties i.e. the petitioner and the respondent to the Doctors for medical examination.

6. Accordingly, the petitioner and the respondent appeared before the Doctors in AIIMS and underwent various tests carried out by the Doctors.

7. Thereafter the application Exh.24 moved for submission of the medical report and supply of the copy to the petitioner. The said application came to be rejected on the ground that it would amount to collection of evidence.

8. I have perused the record and the impugned order.

9. It is admitted fact that, in compliance with the directions of the learned Family Court, vide order dated 22/05/2023, the parties underwent certain medical tests. It appears that even the Family Court has not received any report from AIIMS.

10. On a specific query put to the learned counsel for the petitioner, whether the Doctors in AIIMS have given any certain oral opinion or suggested any treatment either to the petitioner or the respondent after medical examination? The answer is, in negative.

11. The similar question was put to the learned counsel for the respondent, who has shown inability to answer as he has no instructions in this regard.

12. The Family Court, while rejecting the application Exh.24, has observed that the object of the Court was to solve the medical problem with the help of experts. However, in the circumstances, the Court ought to have taken into consideration whether such purpose is achieved and any help was provided by the experts to the petitioner or the respondent.

13. If the Doctors have not expressed their opinion or they have not suggested any treatment if it is necessary, it cannot be said that the purpose is served.

14. The learned Family Court in the impugned order nowhere has observed that any such Expert's opinion or any treatment was suggested by the Doctors either to the petitioner or the respondent.

15. In the above backdrop, if the purpose and object, as mentioned in para 11 of the order is considered, according to me, such purpose is not served.

16. In the circumstances, I am of the opinion that the Family Court may take into consideration the above referred issue and pass fresh order and if necessary the Family Court may call for the report for its own perusal and if the Court further thinks it necessary to disclose the same to the parties, may do so.

17. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 18/12/2023 passed below Exh.24 by the Judge, Family Court, Bhandara is hereby quashed and set aside.
- iii) The matter is remanded back to the Family Court to reconsider the matter afresh to the extent the purpose mentioned in para 11 of the impugned order and pass appropriate order.

The Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE