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C.R.P.(PD)No.4151 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4151 of 2024

Sreyashi Banerjee

.. Petitioner

Vs

Deep Mukerjee

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, for a direction to the II Additional Family Court at Chennai to dispose of O.P.No.2866 of 2021 within a time fixed by this Court.

For Petitioner : Ms.Sheila Jayaprakash

ORDER

The civil revision petition seeks for expeditious disposal of O.P.No.2866 of 2021 preferred by the civil revision petitioner seeking divorce.



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2. The respondent/husband has, in turn, initiated O.P.No.2441 of 2021 seeking for restitution of conjugal rights. Pending the proceedings, an application was taken out in I.A.Nos.8 & 9 of 2023 seeking for a direction to the husband and wife to undergo medical test before the Medical Board attached to the Rajiv Gandhi Government General Hospital at Chennai. The said application came to be allowed by the learned II Additional Judge, Family Court, Chennai. Aggrieved by the same, the civil revision petitioner preferred C.R.P.Nos.2844 & 2848 of 2023. These revisions were disposed of on 28.11.2023, after setting aside the orders passed by the Family Court.

3. The respondent/husband preferred Civil Appeal Nos.4722 & 4723 of 2024 to the Supreme Court. The Supreme Court upheld the order of this Court to the extent that the wife need not undergo any medical test, but taking into consideration the submission of the husband that he is willing to undergo potentiality test, it directed the said test to be conducted within a period of four weeks. Though the order was passed on 05.04.2024, the husband has not yet completed the test as he undertook before the Supreme Court.



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4. When the matter came up for admission on 15.10.2024, I called for a report from the Family Court. The learned II Additional Principal Judge, Family Court at Chennai has sent a report stating that the husband is not co-operating in the conduct of the test as directed by the Supreme Court and that he regularly goes abroad, thereby avoiding the medical test from being conducted. When the Supreme Court has given a direction to complete the test within a period of four weeks and if the husband does not take the benefit of the order so granted, I fail to understand how a Court subordinate to this Court is entitled to extend the time granted in the Civil Appeals.

5. Ms.Sheila Jayaprakash states that the matter was listed on 21.10.2024 and the husband has undertaken to complete the test by today. She points out that, after the disposal of the Civil Appeals, the husband has yet again taken out an application in I.A.No.1 of 2024 seeking the wife to undergo a test of virginity. In paragraph no.7 of the order of the Supreme Court, it has been recorded that the statement of the wife that she is not willing to undergo any test, being a fertility test or a mental health one and that she cannot be compelled to undergo tests. This submission has been accepted by the Supreme Court and it has only



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directed the husband to undergo the potentiality test. When the issues have been concluded by the Supreme Court, it is not open to the respondent/husband to seek to re-open the same by filing a fresh application in I.A.No.1 of 2024.

6. Be that as it may, as the application has been filed by the husband, the learned II Additional Family Judge shall dispose of the three applications which are pending in I.A.Nos.1, 3 & 4 of 2024 in O.P.No.2441 of 2021 and proceed immediately to complete the trial. This is because, the wife has entered the witness box as early as in January 2024 and she is still in the box.

7. In the light of the above discussions, there shall be a direction to the learned II Additional Judge, Family Court at Chennai to dispose of O.P.Nos.2866 & O.P.No.2441 of 2021 within a period of three months from today. Enough time has been granted to the husband to procure the medical report. For his default, the wife need not suffer. The trial Court shall proceed further as directed above and dispose of proceedings within the time limit fixed by this Court.



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8. With the above directions, the civil revision petition stands disposed of. No costs.

23.10.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

II Additional Judge, Family Court at Chennai.



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V. LAKSHMINARAYANAN,J.

Kj

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