



CRP(MD)No.483 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 11.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CRP(MD)No.483 of 2021
and
C.M.P(MD)No.2586 of 2021

S.Muralikanna

... Petitioner/Respondent/Petitioner

Vs

Kanipriya

... Respondent/Petitioner/Respondent

Prayer: This Petition is filed under Article 227 of the Constitution of India to set aside the order passed by the learned Judge, Family Court, Theni in I.A.No.2 of 2020 in O.P.No.269 of 2020, dated 27.01.2021.

For Petitioner : Mr.Niranjana S Kumar

For Respondent : Mr.D.Malaichamy

ORDER

The Civil Revision Petition is filed to set aside the order passed by the learned Judge, Family Court, Theni in I.A.No.2 of 2020 in O.P.No.269 of 2020, dated 27.01.2021.



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2.Originally, the revision petitioner/husband filed a divorce application before the Sub Court, Theni in HMOP No.20 of 2018 and thereafter, the same was transferred to the Family Court, Theni and renumbered as O.P.No.269 of 2020. Pending the divorce application, the husband filed an application in I.A.No.2 of 2020 seeking to examine the Doctor, who had treated the respondent/wife, on 06.05.2008 in I.P.No: O.P: 3261841, Registration No.563680 on 06.01.2015 to 10.01.2025. The revision petitioner contends that the respondent/wife is undergoing a serious mental problem, more specifically affected with paranoid schizophrenia and hence, the Doctor has to be examined by the trial Court.

3.The respondent/wife filed a counter before the Family Court stating that she is clear and the medical examination was done with regard to her pregnancy and for a healthy delivery. Further, the respondent denies the allegation of her mental health condition, and she submits that on 04.06.2012, a female baby was given birth due to the wedlock. She further contends that she is working in a private concern, namely, the Sriram Finance. The trial Court, on the contention of the husband to examine the doctor, has rejected the application on the ground that the petitioner has filed the divorce application on the ground of cruelty under Section 13(1)(a) of the Hindu Marriage Act. When the divorce application was



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filed by the petitioner under the cruelty, now the claim made by him, which classifies as unsound mind, ought to have been filed under Section 13(1)(iii) of the Hindu Marriage Act. The divorce application is filed on a different ground, which distinguishes cruelty and on mental ground and hence, the trial court dismissed the said I.A.No.2 of 2020. Challenging the said order, the petitioner has preferred the present revision petition.

4.The learned counsel for the petitioner vehemently contends that the nature of the mental sickness to be identified after the marriage and more specifically, when they evolved themselves as husband and wife, the behavior and indifferent attitude of the wife had forced the husband to file the divorce application. Though the divorce application was filed under Section 13(1)(a) of the Hindu Marriage Act, the ambit of cruelty is wider with all decrees of relationship between the husband and wife and the cruelty includes the soundness and unsound mind. Therefore, the findings rendered by the trial Court are not in accordance with law when the wife behaves in an unsound mind, or a person who is subjected to mental illness cannot be understood by the husband at the initial stage of marriage. As the relationship between the husband and wife after their marriage is nothing but a honeymoon stage, where any husband or woman, who is entering into the new marital life even a blunder is committed by them viz., the



indifferent attitude of the respondent/wife could be assessed as an unsound mind or mental health.

5.Per contra, the learned counsel for the respondent contends that the respondent is employed with Sriram Chit Funds and she had given birth to a female child out of their wedlock. The husband, for the reasons best known to him, has levelled the sudden allegation of unsound mind and projected the wife in the society as if she is not a stable person to lead a marital life. It is not in dispute that out of their wedlock, a female child is given birth to the revision petitioner and the respondent. Though the claim made by the petitioner is to summon the Doctor who had treated the wife with reference number is stated *supra*, the divorce application was filed on the ground of cruelty. As rightly held by the trial Court, when an application was filed under the ground of cruelty, whereas to summon the Doctor with regard to the soundness of mind ought to have been filed under Section 13(1)(iii) of the Hindu Marriage Act. On that ground, the said application was dismissed.

6.The revision petitioner was aware that his wife is not mentally sound and he did not notice the same at the initial stage. But he ought to have been more conscious when he filed an application for divorce that specifies the act of



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divorce can be granted on different grounds and when there is a specific ground under which the divorce application is sought. The courts are expected to deal with such provision. It is for the trial Court to decide the allegation made by the petitioner or a counter allegation made by the wife, viz., the mental state of the husband and wife. With regard to her stable mind, the petitioner has not produced any materials before the trial Court. When the entire world assumes that the respondent/wife is in a stable mind and except the husband, who has filed this application, it is not for this Court to sit upon in evaluating the allegation made by the petitioner.

7.In view of the above, this Court finds that there is no reason to interfere with the order passed by the trial Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The learned Judge, Family Court, Theni is directed to conclude the divorce application pending in O.P.No.269 of 2020 within a period of one year from the date of receipt of a copy of this order, without being influenced by any of the observations contained herein.

11.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No



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N.SENTHILKUMAR, J.

sjj

To

The Judge, Family Court, Theni.

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