



C.R.P.(MD)No.14 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.14 of 2024
and C.M.P.(MD).No.93 of 2024

S.Bowleys

... Petitioner/Petitioner/Respondent

Vs.

A.Karolin

... Respondent/Respondent/Petitioner

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records and set aside the fair and decreetal order passed by the Additional District Court, Virudhunagar, Virudhunagar District in I.A.No.01 of 2023 in I.D.O.P.No.06 of 2023, on 17.10.2023.

For Petitioner : Mr.M.Jothi Basu

ORDER

Challenging the fair and decreetal order passed by the Additional District Court, Virudhunagar, Virudhunagar District in I.A.No.01 of 2023 in I.D.O.P.No.06 of 2023, on 17.10.2023, this petition has been



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filed.

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2.The brief facts are follows:

I.D.O.P.No.6 of 2023 was filed by the respondent namely the wife against this revision petitioner under Section 10(1)(x)(c) of Indian Divorce Act, 2001, seeking a decree of divorce on various grounds. This petitioner appeared and filed his counter. Pending enquiry process a petition was taken out by the petitioner under Order 32 Rule 15 of C.P.C. to appoint a guardian for the respondent setting out the following facts.

“The wife is mentally ill, so incompetent to file the original petition. If at all, she can file the petition only through guardian. She was taking treatment in Meenakshi Mission Hospital, Madurai, under a Psychiatrist. So proper guardian must be appointed for the respondent”.

3.That was resisted by the wife stating that because of her physical ailment only she resigned her job. Because of the mental and physical cruelty meted out to her by this petitioner, she filed the petition and there is no necessity to appoint any guardian. Her mental capacity is stated to



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be stable.

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4.On the basis of the rival contentions, the trial Court thought it fit to dismiss the petition. Against which, this revision has been preferred.

5.This Court completely loss to understand the base for filing such petition. Whether the respondent is mentally fit person or not cannot be decided by way of filing a petition of this nature to appoint a guardian. We can directly go to the counter filed by the petitioner. In the counter it has been stated that the respondent is suffering from mental illness, for which, she was taken frequent treatment. So because of her mental imbalance only she behaved violently.

6.He also expressed his willingness to live with her. When that is being the position of the petitioner, now legally such a petition is not maintainable.

7.The issue to decide before the enquiry Court is whether as alleged by the respondent, physical and mental cruelty was meted out to



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her and whether the respondent is affected by mental illness. All those things requires proper evidence by way of oral and documentary. In the course of enquiry, if the enquiry Court things it fit to subject the respondent to medical examination, that can be done, but, of course subject her to the proper procedure. By way of filing this petition, the petitioner wants to prematurely prove his defence, which will not lie at this stage.

8.In fact such an exercise was undertaken by the trial Court as indicated in paragraph No.10 of the order, which is extracted herein.

“10.During the enquiry of this petition on 05.10.2023, the respondent was ordered to appear before this Court and this Court enquired her in open Court. She submitted that she is not unsound mind and she applied for voluntarily retirement only because of spinal pain. She submitted that the petitioner has made false allegations of mental illness and filed this petition. During enquiry, this Court found that she was giving rational answers and this Court could not come to a conclusion that she is incapable of understanding the case. So, this Court is of the view that she is capable of conducting the case.”



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9. So when the trial Court itself has enquired the respondent in person and recorded an observation, then nothing more is required by this Court to reject this petition. As noted above the petitioner wants to prove his defence prematurely. So the idea behind this petition is clear abuse of process of the Court and law. So I find absolutely no illegality in the order passed by the trial Court. The petition deserves to be dismissed.

10. Accordingly, this civil revision petition stands dismissed. Consequently, connected miscellaneous petition is closed.

29.01.2024

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

To

1. The Additional District Judge, Virudhunagar.

2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGO VAN,J.

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