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C.R.P.(PD)No.4945 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 20.01.2025

CORAM :

**THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN**

C.R.P.(PD)No.4945 of 2024

Mr.Vaiyapuri@ Pradeepkumar ... Petitioner

Versus

Mrs.D.Muthuselvi ... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of dismissal dated 21.03.2024 passed in I.A.No.12 of 2023 in F.C.O.P.No.257 of 2021 on the file of the Family Judge, Erode.

For Petitioner : Mr.K.Balasubramaniam

For Respondent : Mr.M.Guruprasad

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**ORDER**

This civil revision petition challenges the order passed by the learned Judge, Family Court, Erode in I.A.No.12 of 2023, in F.C.O.P.No.257 of 2021 dated 21.03.2024.

2. For the sake of convenience, the parties shall be referred to as husband and wife.

3. F.C.O.P.No.257 of 2021, has been initiated by the wife seeking divorce,



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on the ground of cruelty under Section 13(1)(1-a) of the Hindu Marriage Act, 1955. A Counter was filed by the husband and the matter has gone for trial.

Examination of the parties has also commenced. At that stage, the husband took out an application in I.A.No.12 of 2023, seeking a direction to the Medical officer, Erode Medical College and Hospital to examine the wife physically and also conduct psychological impotence test with regard to her potency and her sexual health and to submit a report.

4. This application was resisted by the wife stating that such applications have been filed by the husband only in order to drag on the proceedings. The learned trial Judge on a perusal of the affidavit and counter has come to a conclusion that the application does not deserve any consideration and dismissed the same. Aggrieved by the said order, the husband is on revision before me.

4. When the matter came up for admission, I requested Mr.K.Balasubramaniam to serve papers on the learned counsel who represented the respondent herein before the Court below. Summons have been served and Mr.M.Guruprasad has entered appearance for the respondent.

5. I have heard both sides and gone through the records.



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6. The petition for divorce has been predicated on the ground of cruelty that had been meted out by the husband on the wife. The husband has filed a counter stating he has no objection for grant of divorce, but does not want the Court to grant the said order on the basis of the allegations that have been made by the wife.

7. The husband has nowhere in the counter raised any issue as regards the physical or the psychological impotency of the wife. Where there is no pleading, the question of letting in any evidence does not arise. It is well settled but I have to reiterate that no amount of evidence can be looked into by the Court, unless and until, there is a specific pleading to that effect.

8. For the mere fact that the wife has answered to a question in the cross examination that she is willing to undergo physical and psychological impotence test does not mean that the husband is entitled to file an application for the said purpose. Stray statements made during the course of cross examination, not supported by pleadings, cannot give cause of action for the

**LAKSHMINARAYANAN, J**

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husband to file an application as has been done in the present case.

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In the light of the above discussion, I do not find any reason to take a different opinion than that taken by the learned Trial Judge. Hence, this civil revision petition is dismissed. No costs.

**20.01.2025**

Index: Yes/No  
Speaking order/Non-speaking order  
Neutral Citation: Yes/No  
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To

The Family Judge, Erode.

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