

Jaison Vs. Rasna

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Court : Kerala

Decided On : Oct-30-2014

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Jaison

Respondent : Rasna

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA THURSDAY, THE 30TH DAY OF OCTOBER 2014 8TH KARTHIKA, 1936 OP (FC).No. 161 of 2014 (R) ----- AGAINST THE

ORDER

IN I.A.NO.1874/2013 IN OP7642012 of FAMILY COURT, IRINJALAKUDA PETITIONER: ----- JAISON S/O.THEKKEKARA KORATH SANY, PULLUR VILLAGE AND DESOM MUKUNDAPURAM TALUK, THRISSUR DISTRICT. BY ADV. SRI.T.N.MANOJ RESPONDENT: ----- RASNA D/O.KOKKADAN JOSEPH, PUDUKKAD DESOM, THORAVU VILLAGE THRISSUR DISTRICT-680101. R1 BY ADV. SRI.M.SHAJU PURUSHOTHAMAN R1 BY ADV. SRI.K.S.RAJESH THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 30/10-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (FC).No. 161 of 2014 (R) ----- APPENDIX

PETITIONER'S EXHIBITS ----- P1: COPY OF THE
OP7642012 ON THE FILES OF FAMILY COURT IRINJALAKUDA. P2: COPY OF
PETITION IA18742013 IN OP7642012 ON THE FILES OF FAMILY COURT
IRINJALAKUDA. P3: COPY OF THE

ORDER

DATED 73/2014 IN IA PETITION IA18742013 IN OP7642012, OF THE FAMILY
COURT AT IRINJALAKUDA. /TRUE COPY/ PA TO JUDGE
T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ.

----- O.P.(FC)No.161 OF2014- -----

- - - - - Dated this the 30th day of October , 2014

JUDGMENT

Asha, J.

Petitioner is the respondent in O.P(MV) No.764/2012 filed by the respondent herein before the Family Court, Irinjalakuda for dissolution of marriage under Section 10(1)(x) of the Indian Divorce Act, on the ground of cruelty. Petitioner filed an I.A.No.1874/2013 in that O.P, seeking a direction for subjecting the petitioner as well as the respondent for examination by a Medical Board specially constituted with inclusion of a Psychiatrist in order to ascertain the mental disorders if any with the parties. The court below rejected the petition as per order passed on 7.3.14, which is produced as Ext.P3 order in this O.P. This O.P is filed against Ext.P3 order.

2. In the affidavit in support of the I.A.No.1874/2013, which is produced in this O.P. as Ext.P2, it was stated that the petitioner herein had filed a petition before the Family Court seeking custody of his minor daughter for celebrating her birthday which fell due on 10.10.2013 and the same was rejected with the observation that he is a person having mental disorders. Asserting that petitioner is not a person having any abnormalities, he stated he had been O.P.(FC)No.161/2014 2 working in Bangalore at the time of marriage and thereafter in America as a Software Engineer for about 15 years till he returned his home town and he has been occupying key positions in various institutions and organizations. On the other

hand he raised several allegations against the respondent and alleged that the respondent was behaving indifferently as she was having mental problems. It was stated that in order to resolve all the issues, it was necessary to subject both of them to a medical board for psychiatric examination. The respondent wife opposed the petition saying that the examination by the Psychiatrist as sought by the petitioner did not have any relevance for adjudication of the divorce petition filed by her.

3. The Court below after hearing the parties rejected the petition referring to the contents of the report of the Clinical Physiologist, under whom the parties attended Counselling. It was stated that as per the report the petitioner was having certain mental disorders; there is no scope for reunion and the petition has been filed seeking dissolution of marriage on the ground of cruelty and therefore the present petition, seeking a direction to subject both O.P.(FC)No.161/2014 3 parties to a medical examination by the Psychiatrist, did not have any relevance. The petitioner has approached this Court as against this order.

4. The learned counsel for the petitioner Sri. T. N. Manoj, relying on Section 9 of the Family Court Act as well as Rules 29 and 31 of the Family Court Rules and the judgment of this Court Karunakaran v. Vasanthi reported in 2009(1) KLT768 submitted that the court below was not right in rejecting his petition relying on the report of the Counsellor in this manner and the Counsellor should not have disclosed the report before any authority including the Court, except with the consent of the parties and that a copy of the report ought to have been furnished to the parties on request. It was submitted that the court below did not furnish a copy of the report despite his application for the same. It was argued that the petition should have been allowed in the light of the judgment of this Court in Smitha Mathew Vs Dr.Prasoon Kuruvila 2010(3) KLT S.N7 5. Sri. Shaju Purushothaman, the learned counsel for the respondent seriously opposed the prayers, submitting that the O.P.(FC)No.161/2014 4 petitioner wants to delay the matter unnecessarily. We have examined the rival contentions.

6. Section 9 of the Family Courts Act 1984 provides that the Family Court shall make all endeavours at the first instance to assist and persuade the parties to

arrive at a settlement. Rule 29 of the Family Court (Kerala) Rules, 1989 (hereinafter referred to as the 'Rules') provides that any information gathered by the Counsellor, or report prepared by the Counsellor shall be treated as confidential. It also provides that the Counsellor shall not be called upon to disclose the information, statements, notes, or report to any court except with the consent of both the parties. Rule 29 of the Family Court Rules reads as follows: "29. Confidentiality of information:-- Any information gathered by the Counsellor, any statement made before the Counsellor or any notes or report prepared by the Counsellor shall be treated as Confidential. The Counsellor shall not be called upon to disclose this information, statements, notes or report to any Court except with the consent of both the parties." Rule 30 provides that the Counsellor shall not be permitted to give evidence in any Court in respect of information, statements, notes or report referred to in Rule 29. Rule 31 provides that the Court may O.P.(FC)No.161/2014 5 request the Counsellor to submit to it a report on any other subject in order to assist the court in adjudicating the matter and a copy thereof may be supplied to the parties on request. Under Rule 32 the parties are entitled to make their submission on the report. Rule 34 provides that the counsellor shall submit a brief memorandum before the court informing about the outcome of the proceedings before him. Rule 53 provides for calling for an interim report from the Counsellor before deciding an interim application. Rules 31, 34 and 53 read as follows: "31. Report from the Counsellor.- The Court may also request the Counsellor to submit to it a report on any other subject in order to assist the Court in adjudicating upon the matter before it or any part thereof and a copy thereof may be supplied to the parties on request.

34. Submission of memorandum.-- Save as aforesaid, the Counsellor shall submit a brief memorandum to the Court informing the Court of the outcome of the proceedings before him.

53. Report from the Counsellor.- The Court may ask the Counsellor to submit an interim report for the purposes of such application before deciding an interim application." From the order passed by the Family Court, ie. Ext.P3 it is seen that O.P.(FC)No.161/2014 6 the parties had already attended a counselling on 31.8.2013 and thereafter another psychological counselling on 26.9.2013. The

court below, explaining the contents of the proceedings prepared by the clinical Psychologist, in paragraph 8 of the order, opined that the petitioner needs Psychiatric treatment including detailed Psychological assessment. It is after mentioning the contents of the report that the court below rejected the petition, saying that the ground urged in the O.P filed by the wife -respondent, for dissolution of marriage is cruelty and the examination sought in the petition has no relevance for its adjudication, especially when there is no scope for any re-union.

7. As rightly contended by the learned Counsel for the petitioner, we find that the procedure adopted by neither the Counsellor nor the court below was correct. The information gathered by the Clinical Psychologist from the parties ought to have been treated as confidential. It was not liable to be disclosed by the Counsellor to the court except with the consent of the parties. No such consent is seen obtained before disclosing the information gathered. The Court below was not right in adjudicating the petition Ext P2 based on the report of the clinical psychologist and and in disclosing the contents of the report in the order Ext P3, without O.P.(FC)No.161/2014 7 obtaining the consent of the parties. If at all a report was submitted, the parties should have been given copy of the same as provided in Rule 31 in which event they could have submitted their objections if any, on it as provided in Rule 32. Petitioner submits that the copy of the report was not supplied to him despite his application. If that be so, there is violation of rule 31 and 32 also. If at all the Counsellor had submitted a report under Rule 31 or 53, or a memorandum under 34 about the outcome of the counselling, the contents of those reports or memorandum should have been kept confidential and should not have been disclosed as done in Ext P3 order. Hence we find that the procedure adopted by the Court below is in clear violation of the provisions in the Family Court Rules. The nature of confidentiality attached to the report of the Counsellors and the procedure to be adopted by the Counsellor in furnishing the reports and by the Family Court on receiving such reports were considered by this Court elaborately, with reference to all the relevant statutory provisions and case law on the subject in the judgment in Karunakaran Vs Vasanthi (supra) and the conclusions thereon are given in paragraph 37 as follows: O.P.(FC)No.161/2014 8 "(1) Under R.34 of the Rules, no report is to be submitted by the Counsellor and the Counsellor is expected only to make a brief memorandum to the Family Court

informing the court of the out come of the proceedings before him. Exhaustive details of what transpired during the counselling and the information gathered as also the rival contentions and assertions are not to be reported to the court in such memorandum. The out come of the proceedings alone must and need be reported. There can therefore be no question of the Family Court making use of the contents of the memorandum submitted to it under R.34 of the Rules for the purpose of formally resolving any dispute between the parties. The Counsellor as well as the Family Courts must know and understand that such reports should not contain anything but the out come of the proceedings in a counselling/conciliation and consequently the contents thereof cannot be made use of as evidence for formal resolution of the dispute between the parties. (2) It is perfectly permissible for the court to ask for reports under the provisos to R.30, R.31 and R.53 of the Rules. The Counsellor is to furnish to the court such reports when specifically directed by the court. Even when such reports are made, the embargo under R.29 of the Rules must be observed strictly by the Counsellor. He can in such reports report only facts ascertained by him otherwise and not information gathered by him in the course of proceedings in counselling. R.19 of the High Court Rules is not to be read as an exception to R.29 of the Rules. Such reports submitted by the Counsellor shall be used by the Family Court not as evidence in the formal resolution of the lis between the parties; but only as material to assist the court for the appreciation of O.P.(FC)No.161/2014 9 materials/evidence placed before it. Such report can be looked into and so used by the Family Court only after the parties are given an opportunity to make their submissions on such reports under R.32 of the Rules." Therefore, we are of the view that the order passed by the court below to the extent it referred to the contents of the report of the Counsellor and rejected the petition on the basis of the said report is contrary to law. Therefore Ext.P3 order is set aside.

8. However we do not express any opinion on the merits of the petition i.e regarding the claim of the petitioner to have the parties subjected to an examination by the Medical Board including Psychiatrist. The respondent herein had already filed an objection before the Court below opposing the relief sought in the I.A. A memo is also filed before this court in this O.P, stating that the parties were sent for counselling, by the Family Court; and Dr.Jain Jospeh, Government

Mental Health Centre, Thrissur was the Clinical Psychologist under whom the parties underwent counselling on 13.6.2013, 11.7.2013 and 26.09.2013. Under these circumstances, the learned counsel for the respondent serious opposed this appeal and submitted that further examination by the Psychiatrist is not necessary in this case, on the basis of the petition filed by the O.P.(FC)No.161/2014 10 petitioner herein.

9. We are setting aside the order because of procedural irregularities found supra. It is made clear that we have not considered the merits of the relief sought in Exhibit P2 petition. The court below is free to pass appropriate orders afresh on the petition keeping in view the above observations. T.R.RAMACHANDRAN NAIR, JUDGE P.V.ASHA, JUDGE sv.

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