

Ms.Dimple. Vs. J.Johnson Ebenezar

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Court : Chennai

Decided On : Jul-25-2012

Judge : G.Rajasuria, J.

Appeal No. : C.R.P.NPD.No.1218 of 2012 and M.P.No.1 of 2012

Appellant : Ms.Dimple

Respondent : J.Johnson Ebenezar

Advocate for Def. : Mr.D.C.Muthushanthan, Adv

Advocate for Pet/Ap. : Mr.D.Muthukumar, Adv

Judgement :

Civil revision petition filed against the order dated 4.12.2011 passed by the Principal Family Court, Chennai, in I.A.No.2720 of 2011 in O.P.No.2925 of 2007.

ORDER

1. Animadverting upon the order dated 4.12.2011 passed by the Principal Family Court, Chennai, in I.A.No.2720 of 2011 in O.P.No.2925 of 2007, this civil revision petition is filed.

2. Compendiously and concisely, the germane facts absolutely necessary for the disposal of these civil revision petition would run thus:

(i) The revision petitioner herein-Dimple is the wife of the respondent herein. The wife filed the O.P.No.2925 of 2007 for restitution of conjugal rights; whereas, the respondent herein/husband filed the O.P.No.1269 of 2009 seeking divorce on the ground of cruelty.

(ii) According to the learned counsel for the husband, both the matters were taken up for joint enquiry and at that time, the wife filed the chief examination affidavit also. However, there was no progress at all, because of the non-cooperative attitude of the wife in prosecuting the proceedings.

(iii) Whereupon, the learned Judge himself conducted counselling for them and felt that both the parties should be sent for psychiatric evaluation.

3. Being aggrieved by and dissatisfied with the said order, the wife preferred this revision on various grounds.

4. The learned counsel for the revision petitioner/wife would submit that so far the process of adducing evidence was not completed and in the meanwhile such impugned order was passed.

5. The learned counsel would also submit that the husband placed reliance on the ground of cruelty in seeking divorce and not on the basis of the mental illness of his wife, but that fact was not taken note of by the Court. He would also submit that interim maintenance ordered by the Court was not paid for the past six months.

6. Placing reliance on the decision of the Honourable Apex Court reported in (2003) 4 SUPREME COURT CASES 493 SHARDA V. DHARMPAL, the learned counsel for the revision petitioner would pray for setting aside the order passed by the lower Court.

7. The point for consideration is as to whether there is any illegality or impropriety in the order passed by the lower Court in directing both parties to submit themselves for psychiatric evaluation?

8. An excerpt from the cited decision of the Honourable Apex Court in (2003) 4 SUPREME COURT CASES 493 SHARDA V. DHARMPAL, would run thus:

"80. So viewed, the implicit power of a court to direct medical examination of a party to a matrimonial litigation in a case of this nature cannot be held to be violative of one's right of privacy.

81. To sum up, our conclusions are:

1. A matrimonial court has the power to order a person to undergo medical test.

2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.

3. However, the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him."

9. Trite the proposition of law is that subjecting a particular person for psychiatric evaluation itself is an act, which can be resorted to in rare circumstances and it should not be ordered as a matter of course.

10. Here the plain reading of the order of the Family Court would reveal that the Family Court Judge himself had the subjective satisfaction that both the parties should be subjected to such psychiatric evaluation. Not even any general objective observations of the learned Judge concerning the parties is found spelt out in the order. *Alternis visibus*, if evidence is entertained from both sides and after considering the cross-examination of the parties concerned, the Court would be in a much better position to assess as to whether for the purpose of giving a final finding on the alleged cruelty, such psychiatric evaluation is required. Without resorting to it, ordering merely on the subjective satisfaction of the Judge, without any objectivity, in my considered opinion was one, without legs to stand and accordingly that deserves to be dismissed.

11. The learned counsel for the respondent herein/husband would echo the cri de coeur of his client to the effect that the wife is dilly-dallying and shilly-shallying with the matter and she is bent upon dragging on the proceedings ad nauseam and not interested in getting finalized the matter.

12. Whereupon the learned counsel for the wife would submit that those allegations are false and the interim maintenance ordered by the Court was not paid for the past six months and in such a case, the husband is having no right to find fault with the wife.

13. There are allegations and counter allegations. Be that as it may, the Family Court is expected to complete the proceedings as expeditiously as possible, preferably within six months, as prayed by the learned counsel for the respondent/husband. At the first instance, the learned Judge is duty bound to entertain the evidence and complete the process of taking evidence; thereafter, it is open for him to consider as to whether either of the parties or both the parties should be subjected to psychiatric evaluation and for reasons to be recorded, pass order thereon. I make it clear that payment of arrears of interim maintenance is sine quo non for proceeding with the matter.

14. The civil revision petition is ordered accordingly. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

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