

ITEM NO.29

COURT NO.12

SECTION XIIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6074-6075/2005

(From the judgment and order dated 04/03/2005 in CRP.1020 & 1058/2005
of the High Court of Andhra Pradesh at Hyderabad)

RADHIKA GUPTA

Petitioner(s)

VERSUS

DARSHAN GUPTA

Respondent(s)

(With prayer for interim relief)

(With appln. for permission to bring on record subsequent developments and
seeking further orders)

Date: 04/04/2005 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner(s) Mr. PS. Narasimha, Adv.

Mr. Sridhar Potaraju, Adv.

Mr. Ananga Bhattacharyya, Adv.

Mr. John Mathew, Adv.

For Respondent(s) Mr. Rajesh Gupta, Adv.

Mr. Harpreet Singh, Adv.

Mr. Pratap Venugopal, Adv.

Mr. PS. Sudheer, Adv.for

M/S. K.J. John & Co., Advs.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeals are disposed of in terms of the signed order.

(S. Thapar)

(Phoolan Wati Arora)

PS to Registrar

Court Master

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The signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.....OF 2005

(Arising out of SLP(C)Nos. 6074-6075/2005)

Radhika Gupta
(s)

Appellant

Versus

Darshan Gupta
Respondent (s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

These appeals filed by the wife arise out of common
impugned judgment of the
High Court passed in matrimonial proceedings for divorce instituted
by the husband on the

ground of alleged mental illness of the wife. The High Court, in the operative part of its order,

has made the following directions:

"That the wife shall give her chief-examination on affidavit by 12th March,
2005 and shall appear before the trial court on 19th March, 2005
and be
cross-examined, preferably in camera. After her statement is recorded,
she
shall be referred for medical examination by the expert
s. The revision
petitions are accordingly disposed of. No costs."

Learned counsel appearing for the wife submits that the wife should be
first allowed

to produce medical evidence of her mental fitness and it is only thereafter she should be given an

option to enter into the witness box to oppose the case and evidence led by the husband.

We have also heard learned counsel appearing for the husband who has
made some

efforts to support the impugned directions contained in the order of the High Court.

In our opinion, in law the wife has an option to decide in what
manner she would

oppose the ground of mental illness alleged against her. The High Court erred in directing that

she would first give evidence on affidavit as her examination-in-chief and thereafter appear for

cross-examination. The proper course which ought to have been adopted by the High Court was

to allow her to undergo medical examination, if she so desired, and thereafter give her oral

evidence, if she so liked to do. The rigid procedure for recording evidence as directed by the

High Court is unwarranted in law and particularly in matrimonial proceedings of the nature

where wife has to face charge of her mental unfitness

For the reasons aforesaid, we set aside the impugned part of the direction contained

in the order of the High Court quoted above. The matrimonial court shall allow the wife to

produce her medical evidence and thereafter she will have an option to give her oral evidence.

Learned counsel for the appellant has pointed out that during the pendency of

these appeals, the Family Court has closed the evidence of the wife. In such circumstances, it is

open to the wife to file a proper application before the Family Court with a request to re-open

her case for enabling her to lead her evidence.

The appeals are allowed accordingly.

.....J

M. DHARMADHIKARI)

New Delhi,

March 04, 2005

N. SRIKRISHNA)

.....J

(D.

.....J

(B.

