

**Court No. - 39**

**Case :-** FIRST APPEAL No. - 803 of 2024

**Appellant :-** Pooja Gautam

**Respondent :-** Neeraj Gautam

**Counsel for Appellant :-** Ishir Sripat, Siddharth Agrawal

**Hon'ble Saumitra Dayal Singh, J.**

**Hon'ble Donadi Ramesh, J.**

1. Heard Sri Ishir Sripat, learned counsel for the appellant and perused the record.
2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984, arising from the order dated 25.07.2024 passed by the Principal Judge, Family Court, Hathras in Divorce Petition No. 272 of 2020 (Neeraj Gautam Vs. Smt. Pooja Gautam). By that order, the learned trial court has allowed the application Paper No. 53-C(2) filed by the respondent seeking medical examination of the present appellant.
3. Submission is, the said order is wholly erroneous inasmuch as on a similar application filed earlier, the learned trial court had vide its order dated 29.01.2024 directed such application to be dealt with at the stage of final disposal. Thus, it has been submitted, at present, only evidence has been led and the stage of final disposal of the case has not been reached.
4. Second objection has been raised to the observations made by the learned trial court in the impugned order. It has thus been submitted, those observations are prejudicial to the case of the appellant. If allowed to stand, they may lead to adverse inference being drawn at the stage of final disposal of the case.
5. Third, in any case, a proper medical board should have been constituted by the CMO.

6. Having heard learned counsel for the appellant, we find, the learned trial court has called for the report from the Aligarh Muslim University. That institute not being a government facility, it may not have been engaged first.

7. Thus, in formal/Court proceedings primarily the report may be called of a medical board, to be constituted by the CMO, Hathras who may have nominated appropriate doctors on the board including qualified Neurologist/s and Psychiatrist/s alongwith such other doctor as may be necessary to make the required assessment.

8. Insofar as the second objection is concerned, we find, observations exist in the impugned order. At the same time, those are tentative - expressing *prima facie* opinion of the learned trial court, to call for the medical opinion.

9. In any case, in view of the order proposed to be passed, we provide, those observations may not be relevant or be considered at the stage of final hearing of the divorce case.

10. Insofar as the first objection is concerned, we find, though earlier the learned trial court had made an order providing for disposal of the similar application at the stage of final disposal of the case, yet that was an interlocutory order. Second, though worded in that fashion, the issue of mental health of the appellant would require expert evidence to be led, to reach any finding in that regard.

11. To that extent, the learned trial court has not erred in calling for the medical opinion at the stage of evidence. At present, evidence of the parties is over. Thus, the learned trial court has correctly called for the 'expert opinion' at that stage.

12. Accordingly, we **dispose of** this appeal with the observation that the medical opinion called for by the learned trial court may

be furnished by the medical board to be constituted by the CMO, Hathras who may constitute appropriate team of experts from departments of Neurology, Psychiatry and General Medicine and such other doctor/expert as he may deem fit, to give full effect to the order impugned in the appeal. Such team may be constituted by the CMO, Hathras within a period of one week from the date of certified copy of this order is served on the said authority. The appellant shall present herself before that team of experts on the date and time to be communicated to her by the CMO, Hathras.

13. Let medical report of the CMO, Hathras be submitted before the learned trial court not later than 30.09.2024.

**Order Date :- 10.9.2024**

Abhilash

**(Donadi Ramesh, J.) (S. D. Singh, J.)**