

HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

F.C.A.No.184 of 2014

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JUDGMENT : (per Hon'ble Sri Justice R.Subhash Reddy)

This appeal, under Section 19 of the Family Courts Act, 1984 is filed by the appellants/petitioners aggrieved by the order and decree dated 30.08.2014 in O.P.No.123 of 2014 passed by the Additional Family Court, City Civil Court, Hyderabad, dismissing the petition filed by them under Section 13(B) of Hindu Marriage Act, 1955 (for brevity "the Act") for dissolution of their marriage dated 13.3.2009 by way of mutual consent.

2. Appellant No.1/Petitioner No.1, represented through her mother, who is the Special Power of Attorney Holder, and appellant No.2/petitioner No.2, who is the husband of petitioner No.1, have filed O.P.No.123 of 2014 before the Court below under Section 13(B) of the Act seeking dissolution of the marriage by way of mutual consent. At the first instance, an affidavit of petitioner No.1 is filed, which is sworn in London and attested by a Notary, confirming the contents of the petition in O.P.No.123 of 2014 being filed before the Court below. The Court below, through the impugned order dated 30.8.2014 dismissed the said petition on the ground that petitioner No.1/wife did attend the Court, either on the date of filing or on the date of disposal of the petition, and only the 2nd petitioner-husband has attended the Court and in the absence of petitioner No.1 on the date of filing and also on the date of disposal of the petition, the petition is dismissed. Hence, the present appeal.

3. In this appeal, learned counsel for the appellants relied upon a judgment of this Court in Mrs. PADMAKIRAN RAO v. B. VENKATARAMANA RAO, wherein this Court, in identical circumstances, interpreting the word “hearing” used under Section 13 (B) of the Act, held as under:

“Relying on the wording – ‘after hearing the parties’ in Sub-section (2) of Section 13-B, the learned Subordinate Judge took the view that both the parties to the marriage should necessarily be present in the Court for examination and the filing of affidavit will not be a substitute for that requirement. The learned Judge observed that unless the parties are personally present, it would be difficult for the Court to assess whether they have changed their mind since the date of filing the petition. We do not think that this is a correct view to be taken. ‘Hearing’ does not necessarily mean that both parties have to be examined. The word ‘hearing’ is often used in a broad sense which need not always mean personal hearing. In any case, the evidence of one of the parties i.e., the appellant herein was recorded by the Court. Thus, even if the word ‘hearing’ is construed in a literal sense, that requirement must be deemed to have been satisfied in the instant case in view of the examination of the appellant. On the husband’s side, there is evidence in the form of an affidavit which can be legitimately taken into account in view of Order XIX Rule 1 C.P.C. it is not as if the affidavit has been doubted or the other party wanted to cross-examine the deponent of the affidavit. When there are no suspicious circumstances or any particular reason to think that the averments in the affidavit may not be true there is absolutely no reason why the Court should not act on the affidavit filed by one of the parties.”

4. In the instant case, when the matter has come up on the last occasion, the Special Power of Attorney holder, who is the mother of petitioner No.1, and petitioner No.2 were asked to be present in person. Today, they are present in person before this Court. The Special Power of Attorney Holder, who is the mother of petitioner No.1 has stated that her daughter is staying in London and requested for dissolution of the marriage between petitioner No.1 and petitioner No.2 in view of the affidavit filed by her daughter/petitioner No.1, which is sworn in London and attested by a Notary, confirming the contents of the petition in O.P.No.123 of 2014, requested to allow the appeal by dissolving the marriage between petitioner No.1 and

petitioner No.2.

5. For the aforesaid reasons, as per the judgment in the case of Mrs. PADMAKIRAN RAO (supra), we are of the view that having regard to the affidavit filed by petitioner No.1, which is sworn in London and attested by a Notary, confirming the contents of the petition in O.P.No.123 of 2014 for dissolution of the marriage, we allow this appeal and set aside the impugned order dated 30.8.2014. Consequently, O.P.No.123 of 2014 stands allowed dissolving the marriage between petitioner No.1 and petitioner No.2 by way of mutual consent.

6. As a sequel, miscellaneous petitions pending, if any, in this appeal shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

01.04.2015.

Msr

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