

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

-

Civil Revision Petition No.1384 of 2015

-

ORDER:

This revision is preferred against the order passed by the Judge, Family Court-cum-V Additional District and Sessions Judge, Visakhapatnam in I.A.No.845 of 2014 in O.P.No.1104 of 2010 dated 24.02.2015.

The petitioner herein is the respondent in both the O.P. and the I.A. The O.P. was filed by the respondent-wife seeking divorce, refund of Rs.5.00 Lakhs as dowry and Rs.10.00 Lakhs for arrangement of marriage, and return of gold weighing 50 Kasulu. The O.P. was dismissed on 10.02.2014. An application, to set aside the default order dated 10.02.2014, was filed by way of I.A.No.845 of 2014 under Section 10(1) of the Family Courts Act, 1984.

The objection raised by the petitioner herein is that no application could have been filed under Section 10(1) of the Family Courts Act, 1984, and an application could only have been filed under Order IX CPC. The Court below held that, being a Family Court, it could adopt its own procedure to meet the ends of justice; and it was just and necessary to provide an opportunity to the respondent-wife to proceed with the matter. The petition was allowed on payment of costs of Rs.500/- to the DLSA.

Section 10(1) of the Family Courts Act, 1984 provides that, subject to the other provisions of the Act and the Rules, the provisions of the Code of Civil Procedure, 1908 and of any other law for the time being in force shall apply to Suits and proceedings before a Family Court; and, for the purpose of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court, and shall have all the powers of such Court.

While the provisions of the CPC are no doubt applicable, subject to the provisions of the Family Courts Act and the Rules made thereunder, the jurisdiction which this Court exercises under Article 227 of the Constitution of India is supervisory and not appellate. Save patent illegality and substantial

injustice being caused to the person invoking its jurisdiction, this Court would refrain from interference. Once the petitioner herein concedes that the Court below had the power under Order IX CPC to restore the O.P. to file, the order of the Court below does not necessitate interference merely because it has, instead, entertained the application under Section 10(1) of the Family Courts Act. As long as the Family Court has the power to deal with the matter, to set aside the default order and to restore the O.P. to file, the mere fact that the application has been entertained under another provision is of no consequence. This Court may not be understood as having held that such an application could not have been entertained under Section 10 of the Family Courts Act. It is unnecessary to examine this question once it is admitted that the Family Court had the power to do so under the Civil Procedure Code. The petitioner herein cannot also be said to have suffered prejudice as it is always open to him to contest the matter on merits. I see no reason, therefore, to exercise discretion, under Article 227 of the Constitution, to interfere with the order of the Court below on hyper technicalities.

The Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:12.06.2015.

cs

-