

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.2708 of 2015

Dated: 17.07.2015

Between:

A.N.V.Padmavathi.

.. Petitioner

And

Dr. A.Neelakanteswara Rao,
S/o. Mohan Rao, aged about 47 years,
Occ: Associate Professor in
National Institute of Technology (NIT),
Warangal, R/o. Visitors Block, NIT, Warangal,
Warangal District.

.. Respondent

Counsel for the Petitioner: Mr. S.V.Muni Reddy

Counsel for the Respondents: None appeared

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This Court made the following:

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ORDER:

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This Civil Revision Petition arises out of order dated 03.06.2015 in I.A.No.895 of 2014 in FCOP.No.170 of 2013 on the file of the Judge, Family Court-cum-Additional Sessions Judge, Guntur.

The respondent filed FCOP.No.170 of 2013 for judicial separation. The petitioner has filed HMOP.No.143 of 2012 for restitution of conjugal rights. Pending these O.Ps, the respondent has filed I.A.No.895 of 2014 under Order VI Rule 17 C.P.C., for amendment of FCOP.No.170 of 2013 for conversion of the FCOP into one for grant of divorce. The petitioner has strongly resisted this application. However, by the above-mentioned order,

the lower Court has allowed the application by observing that the trial in the case has not been commenced and that the grounds for both judicial separation and divorce are substantially the same and that therefore there can be no legally sustainable objection for conversion of the FCOP into one for grant of divorce.

Mr. S.V. Muni Reddy, learned counsel for the petitioner, relied upon the judgment of this Court in **G.S.Prakash v. Polasa Hanumanlu**^[1] and submitted that as the nature and character of the O.P will be completely changed, the amendment falls in the teeth of para 17 (i) of the conclusions drawn by this Court in the said case.

I have carefully considered the submission of the learned counsel. This Court, in **G.S.Prakash** (referred supra), has attempted to enumerate the instances where the amendments have to be allowed and they have to be refused. Para 17 (i) of the judgment contains one of the instances where amendment has to be refused. It reads as under:

“Where by the proposed amendment the party seeks to alter the nature, character and constitution of the suit (mere inconsistent pleadings may not, in all cases, change the nature and character of the suit) or substitute cause of action or introduce a distinct cause of action”

In the instant case, though a larger relief than the one which was originally claimed by the respondent sought by way of amendment, as rightly observed by the lower Court, the grounds on which the original relief, viz., judicial separation and the amended relief, viz., divorce, prescribed for grant of the reliefs are substantially the same. This is evident from Section 10 of the Hindu Marriage Act, 1955 (for short, ‘the Act’), under which a party to a marriage can seek judicial separation on any of the grounds mentioned in sub-section 1 of Section 13 of the Act. Sub-section (1) of Section 13 of the Act contains several grounds on which a person can claim decree of divorce. Thus, this is not a case where the nature and character of the FCOP filed by the respondent will be changed by way of proposed amendment, except that in place of judicial separation, the respondent sought for a decree for divorce.

In the above facts and circumstances of the case, I do not find any material illegality or jurisdictional error in the order of the lower Court.

This Civil Revision Petition is accordingly dismissed.

As a sequel to dismissal of this revision, CRPMP.No.3626 of 2015 filed by the petitioner for interim relief stands dismissed as infructuous.

17.07.2015
v v

C.V.NAGARJUNA REDDY, J

[\[1\]](#) 2015 (2) ALT 594