

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
CIVIL REVISION PETITION NO.2718 OF 2015

-

ORDER:

It is an unfortunate case where the learned Family Court Judge, Ranga Reddy at L.B.Nagar dismissed the interlocutory application I.A.No.1594 of 2014 in O.P.No.486 of 2014 filed by the respondent-husband seeking assistance of a lawyer to defend his case. That application has been dismissed by the Court below in a couple of sentences which read as under:

“Counsels of both side present. Counter not filed. Hence position is dismissed as not maintainable.”

Section 13 of the Family Courts Act, 1984, has spelt out that notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner. Thus, no legal practitioner, as a matter of right can seek to enter his appearance in any suit or proceeding before the Family Court and insist to assist the Court by prosecuting the brief of one of the two sides. The rationale behind this provision, can also be culled out from Section 9 of the said Act which imposed certain duty on the Family Court to make efforts for securing settlement of the disputes between the parties so that the institution of marriage etcetera can be preserved and promoted. The proceedings before the Family Court are not to be conducted as purely some kind of advisory proceedings, but with an emphasis of preserving the institution of marriage. Consequently, the spill over effects of a fall out of a marriage can be attempted to be suffered. But, at the same time, the bar contained in Section 13 is not an absolute one. That can be culled out from the proviso added there under. It spelt out that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*. Therefore, the emphasis is laid on the interests of justice. In the instant case, the respondent-wife filed the O.P. seeking divorce from the petitioner herein, her husband. Incidentally, she has been

permitted to be represented by a legal practitioner. Therefore, in permitting the assistance of a legal practitioner for the respondent-wife would amount to holding the balance unevenly. The wife, the petitioner in the O.P. when is permitted to be represented by a lawyer, it goes without saying that a similar treatment is required to be extended to the respondent-husband in the O.P. as well. Otherwise, a feeling of inequality is always left in the minds of the opposite parties that for want of the assistance of a trained lawyer, their case has suffered certain prejudice. It is not difficult for anyone to assume that qualitatively the presentation of a view point would greatly get altered with the presence of a trained lawyer. When once the petitioner in the O.P is permitted to be represented by a lawyer, it goes as a natural corollary that the opposite party should also have been allowed to be represented by a legal counsel. Therefore, the order passed by the Family Court rejecting I.A.No.1594 of 2014 moved by the petitioner is unsustainable and it is erroneous. Accordingly the order passed in I.A.No.1594 of 2014 is set-aside and the civil revision petition is allowed.

Consequently, miscellaneous applications pending if any shall stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

14.08.2015
sp