

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.884 of 2015

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ORDER:

Heard Sri A.P.Venugopal, learned counsel for petitioner and Sri P.Gangaiah Naidu, learned Senior counsel appearing for Sri N.Bharat Babu, learned counsel for respondent.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India by the petitioner herein questioning the action of the Family Court-cum-Additional District and Sessions Judge, Ongole in continuing the proceedings in O.P.No.23 of 2011 on his file contrary to a joint memo dt.10-06-2012 filed by the parties in G.W.O.P.No.24 of 2011 before the Family Court-cum-Additional District and Sessions Judge, Ongole.

3. It is not disputed by both parties that petitioner herein had filed O.P.No.22 of 2011 for restitution of conjugal rights and the respondent had filed O.P.No.23 of 2011 against petitioner seeking dissolution of their marriage. It is also not disputed that the petitioner had filed G.W.O.P.No.24 of 2011 seeking custody of their minor baby Yashitha.

4. In the joint memo filed by both parties in

G.W.O.P.No.24 of 2011, the parties had agreed to admit the child in a school in Ooty and they have also agreed on separate visitation rights. One of the clauses of the joint memo stated that both parties agreed to keep pending all other cases on the file of Family Court-cum-Additional District and Sessions Judge, Ongole and agreed that orders of the Family Court with the above terms should be communicated to the school authorities to comply with the same.

5. The petitioner's grievance now is that contrary to the contents of the joint memo, the Family Court-cum-Additional District and Sessions Judge, Ongole is insisting on the trial in Divorce O.P. No.23 of 2011 filed by respondent against petitioner.

6. The learned counsel for petitioner contends that the petitioner is interested in the welfare of the child and the Court below should not decide the Divorce O.P. filed by respondent or the O.P. for restitution for conjugal rights filed by petitioner, since it would affect the minor child.

7. I am of the considered opinion that it is not for the petitioner to decide whether the marriage should continue or it should be dissolved particularly when the respondent is resisting the O.P. filed by petitioner for restitution of conjugal rights and in seeking divorce in O.P.No.23 of

2011. Since the age of the parties would be advancing, the chances of either party remarrying if there is a divorce granted in the proceedings pending before the Family Court, would diminish. The petitioner cannot compel the respondent not to proceed with divorce application filed by her merely because he feels that the marriage should continue. Therefore I see no irregularity in the Court below proceeding with the trial in O.P.No.23 of 2011.

8. The learned counsel for petitioner contended that under Section 9 of the Family Courts Act, 1984 the Court is entitled to adjourn the proceedings for a reasonable period if it appears that there is a reasonable opportunity to settle the matter between the parties. He therefore contended that in view of the memo filed by both parties, the Family Court should adjourn the proceedings *sine die* indefinitely to enable the parties to settle the matter.

9. Admittedly, the O.Ps. in question had been filed in the year 2010. The joint memo was filed for the limited purpose to provide better education to the minor child in a school in Ooty. Neither party has accepted the stand of the other party with regard to the continuation or dissolution of the marriage. 5 years have elapsed since filing of the O.P. and 3 years have elapsed since filing the joint memo. Since both parties have not arrived at an amicable settlement on the continuation of their *inter se*

relationship, the Court below is left with no option but to proceed with the O.Ps. in accordance with law.

10. It is also brought to my notice that after filing of this Revision, I.A.No.701 of 2015 has been filed by petitioner to club O.P.No.23 of 2011 filed by respondent seeking divorce, O.P.No.22 of 2011 filed by himself for restitution of conjugal rights and G.W.O.P.No.24 of 2011 filed by petitioner seeking custody of the minor child. Now all the 3 O.Ps. are clubbed and the Court below is proceeding to decide the same in accordance with law. So both parties are directed to cooperate with the disposal of the said cases.

11. For all the above reasons, the Civil Revision Petition is dismissed. No costs.

12. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 24-06-2015

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