

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 6236 OF 2009

ORDER:

This Revision is filed challenging the order dated 23.09.2009 in I.A.No. 427 of 2007 in O.P.No. 525 of 2006 of the Family Court –cum- IV Additional District and Sessions Court at Vijayawada.

Heard Sri Y. Ramatirtha, learned counsel appearing for petitioner and Sri N. Nagaraja Kapoor, learned counsel appearing for respondent.

The petitioner herein is the respondent in the above O.P. The said O.P. was filed by the respondent herein against petitioner seeking divorce. Summons in the O.P were sent to the petitioner. She refused to take the notice. Therefore, an ex-parte decree was passed on 4.12.2006 dissolving the marriage between the parties.

Thereafter, the petitioner herein filed I.A.No. 427 of 2007 under Section 5 of Limitation Act, 1963 to condone the delay of 84 days in filing the petition under Order IX Rule 13 of CPC and also filed another application to set aside the exparte decree.

In the affidavit filed in support of the application she stated that she did not receive any notice either through Court or through registered post; that on account of ill health she was taking treatment from Dr. B.B.S. Sai Babu at Pedana; when she returned to her village, the relative of her husband informed to her parents that the respondent obtained divorce decree against petitioner and he wants to marry another lady. So she filed this I.A.No. 427 of 2007.

Counter affidavit was filed by the respondent to the said I.A contending that the petitioner received the summons and signed as P. Parvathi, and this discloses that she signed with her maiden surname accepting the divorce and also knowing that divorce decree has been passed against her.

An enquiry was conducted in the said I.A and in the cross-examination, the petitioner admitted that she refused to take notice in the OP by post and so the postal authority sent back the same.

By order dated 23.9.2009 the Court below dismissed the said I.A. It held that the petitioner had refused the notice in the OP; that the petitioner had admitted that name of the disease with which she was suffering, or the period from which date to which date she was treated by the said doctor, were not mentioned in the medical certificate produced by her; these facts were also not noted in the affidavit filed by the petitioner or stated in her evidence; that petitioner appears to have also given evidence before the Judicial First Class Magistrate, Machilipatnam, in which she admitted that she has not taken treatment from December, 2006 to February, 2007; and so the petitioner, having intentionally refused to take summons from the Court in the OP, cannot be granted any indulgence. It therefore rejected the I.A.

Counsel for the petitioner contends that on account of confusion, the petitioner had deposed before the Court in the enquiry to the effect that she refused to take notice sent to her

by post in the OP; that the petitioner is not interested in divorcing the respondent; and therefore, the order passed by the court below should be set aside and an opportunity be given to the petitioner to contest the OP.

There is no dispute that the petitioner had stated in the affidavit filed in support of I.A No. 427 of 2007 that she did not receive any notice either through Court or through registered post but in the witness box in her cross-examination, she clearly admitted that she refused to take notice from the Court in the OP and the postal authority sent back the same.

The affidavit filed by her in the I.A also does not disclose the alleged illness from which the petitioner claimed to have obtained treatment from Dr. B.B.S. Sai Babu at Pedana nor does it indicate the duration of the treatment. Petitioner admitted in her evidence that she had given evidence before the Judicial First Class Magistrate, Machilipatnam in proceedings under Section 498-A IPC initiated by her against the respondent and in that case she had stated that she did not take any treatment from December 2006 to February 2007. Thus it is clear that the petitioner is not speaking truth. If the petitioner is really interested in contesting the O.P she ought to have received the summons sent by the Family Court and contested the same.

Therefore, I am of the opinion that the Court below did not commit any error in dismissing the I.A No. 427 of 2007 and in refusing to condone the delay of 84 days in filing the petition under Order 9 Rule 13 CPC.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08.06.2015

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