

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

C.R.P. No.1857 of 2014

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.07.05.2014 in IA.No.338 of 2014 in O.P.No.696 of 2013 of the Judge, Additional Family Court, Hyderabad.

2. The petitioner herein had filed the above O.P. for dissolution of her marriage with the respondent on the ground of mental and physical cruelty.

3. Summons therein were served on the respondent. The counsel engaged by the respondent filed vakalat on 02.01.2014 along with an application under Section 13 of Family Courts Act, 1984. It appears that the counsel for the respondent also filed application under Rules 32 and 33 of Civil Rules of Practice for appointment of General Power of Attorney to defend the case of the respondent. The said applications were numbered as SR.No.5856 of 2013, 5857 of 2013 and 5858 of 2013 on 02.01.2014. While, so the respondent was set ex parte on 06.03.2014.

4. Claiming that he was employed in Singapore and therefore he was unable to appear before the Court since his employer did not give him permission to do so, the respondent filed I.A.No.233 of 2014 under Order IX Rule 7 CPC to set aside the order dt.06.03.2014 setting him ex parte.

5. This application was contested by the petitioner.

6. By order dt.10.04.2014 the said application was dismissed on the

ground that the affidavit filed along with the said application was sworn on 18.03.2014 and according to the respondent's own case on that day he was at Singapore. The Court also pointed out that the affidavit is not sworn by the embassy or some notary in Singapore, but it appears to have been drafted on blank papers signed by the respondent.

7. Thereafter, the respondent again filed IA.No.338 of 2014 to set aside the order dt.06.03.2014 setting him ex parte reiterating the stand taken by him in IA.No.233 of 2014. He mentioned about the rejection of I.A.No.233 of 2014 and the grounds of said rejection and prayed that the order dt.06.03.2014 be recalled, so that he may have an opportunity to contest the O.P. on merits.

8. Counter affidavit was filed by the petitioner opposing this application also and denying the contents therein. She contended that since the applications filed by the respondents were still at SR stage and the same were not allowed by the Court, neither the counsel for respondent nor his GPA can represent in the Court.

9. By order dt.07.05.2014 the Court below allowed I.A.No.338 of 2014 on payment of costs of Rs.750/- payable by the respondent to the petitioner on or before 06.06.2014. The Family Court took the view that the earlier dismissal of the I.A.No.233 of 2014 was on a technical ground that the affidavit was not properly attested and the dismissal was not on merits. Therefore, the said order would not operate as res judicata. It observed that the present application was signed by the respondent after coming to Hyderabad. It held that since the main OP was filed for dissolution of marriage, the respondent wants to contest the same, since he was staying in Singapore, and was unable to attend the Court, there is sufficient reason to set aside the order dt.06.03.2014 setting him ex parte.

10. Challenging the same this Revision is filed.

11. Although counsel for the petitioner contended that the impugned order suffers from error of jurisdiction and that the Court below ought not to have entertained it having regard to the dismissal of I.A.No.233 of 2014, I am unable to agree with the said submission.

12. As rightly held by the Court below, I.A.No.233 of 2014 had been dismissed on a technical ground that affidavit therein was not properly attested. Therefore, the said dismissal does not bar the respondent from filing another application under Order IX Rule 7 CPC. Since the respondent is employed in Singapore, he was unable to attend the Court on 06.03.2014 leading to his being set ex parte in the O.P. Therefore, the Court below was right in allowing I.A.No.338 of 2014 on payment of costs of Rs.750/- to the petitioner by the respondent.

13. I therefore, do not find any error or infirmity in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

14. So, this Civil Revision Petition is dismissed. There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

29th October, 2015

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