

**IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH**

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F.C.A.No.197 OF 2015

Between:

Teli Manoj Kumar

.. Appellant

and

Teli Deepika

.. Respondent

DATE OF JUDGMENT PRONOUNCED: July 29,
2015

SUBMITTED FOR APPROVAL:

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**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be | Yes/No |

marked to Law Reporters/Journals?

3. Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

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F.C.A.No.197 OF 2015

JUDGMENT: (Per Hon'ble Sri Justice R. Subhash Reddy)

This appeal, under Section 19 of the Family Courts Act, 1984, is filed by petitioner No.1 in F.C.O.P.No.881 of 2014 on the file of Additional Family Court, Hyderabad, aggrieved by the order, dated 03.01.2015, passed in the said O.P..

Respondent is the wife of the appellant. Their marriage was performed on 06.07.2011 as per Hindu Rites and Customs. Subsequently, in the year 2014, they filed the present O.P., under Section 13-B of the Hindu Marriage Act, 1955 (for short, 'the Act'), seeking dissolution of marriage performed between them. As the appellant is residing in United States of America (U.S.A.), he was represented by his father, Sri Teli Jayanarayan, as a Special Power of Attorney holder. The Family Court, by impugned order, dated 03.01.2015, has dismissed the O.P. mainly on the ground that the appellant was not

present in person either on the date of filing of O.P. or on the date of hearing of the matter, as required under Section 13-B of the Act.

Learned counsel for the appellant, in support of his contentions, has placed reliance on the judgment of this Court in

Mrs. Padmakiran Rao v. Mr. B. Venkateramana Rao ^[1], wherein the word 'Hearing' used in Sub-Section (2) of Section 13-B of the Act was interpreted stating that hearing does not mean that both the parties must present on the date of personal hearing and be examined in Court. He has further contended that in the aforesaid case also husband was residing in U.S.A. and he was represented by his General Power of Attorney Holder, and in spite of the same, this Court has allowed the petition.

In the aforesaid judgment, this Court, while interpreting the wording 'after hearing the parties' used in Sub-Section (2) of Section 13-B has held as under:

“2. Relying on the wording – “after hearing the parties” in sub-section (2) of Section 13-B, the learned Subordinate Judge took the view that both the parties to the marriage should necessarily be present in the Court for examination and the filing of affidavit

will not be a substitute for that requirement. The learned Judge observed that unless the parties are personally present, it would be difficult for the Court to assess whether they have changed their mind since the date of filing the petition. We do not think that this is a correct view to be taken. 'Hearing' does not necessarily mean that both parties have to be examined. The word 'hearing' is often used in a broad sense which need not always mean personal hearing. In any case, the evidence of one of the parties i.e., the appellant herein was recorded by the Court. Thus, even if the word 'hearing' is construed in a literal sense that requirement must be deemed to have been satisfied in the instant case in view of the examination of the appellant. On the husband's side, there is evidence in the form of an affidavit which can be legitimately taken into account in view of Order XIX Rule 1 C.P.C. It is not as if the affidavit has been doubted or the other party wanted to cross-examine the deponent of the affidavit. When there are no suspicious circumstances or any particular reason to think that the averments in the affidavit may not be true, there is absolutely no reason why the Court should not act on the affidavit filed by one of the parties. The learned Judge fell into error of law in observing that he cannot look into the affidavit at all. There is also a valid reason for non-attendance of the respondent in the Court. In the circumstances, the order of the lower Court is set aside and the appeal is allowed. We declare that the marriage between the parties shall stand dissolved with effect from the date of this judgment and a decree for

divorce be passed. We make no order as to costs.”

Today, when the matter is called, the Special Power of Attorney holder representing the appellant is present in person and is identified by his counsel. The respondent is also present in person and she has produced a copy of her passport in proof of her identity.

In view of the request made by the parties to dissolve the marriage performed between them and in view of the aforesaid judgment of this Court relied on by the learned counsel for appellant, we are of the view that it is a fit case to set aside the impugned order, dated 03.01.2015.

Accordingly, the appeal is allowed and the order, dated 03.01.2015, passed in F.C.O.P.No.881 of 2014 by the Additional Family Court, Hyderabad, is set aside. Consequently, F.C.O.P.No.881 of 2014 stands allowed by dissolving the marriage performed between the parties.

Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. No costs.

R. SUBHASH

REDDY, J

A. SHANKAR

NARAYANA, J
July 29, 2015
MD

[\[1\]](#) 1995 (3) ALT 154 (D.B.)