

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

C.R.P. No.1478 of 2015

Between:

Ponnaluri Sriram

... Petitioner

And

Ponnaluri Vishnu Vandana

... Respondent

JUDGMENT PRONOUNCED ON : 24.08.2015

THE HON'BLE SRI JUSTICE : G.CHANDRAIAH

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
marked to Law Reporters/Journals. :
3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? :

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH

C.R.P. No.1478 of 2015

ORDER:

This revision petition has been filed aggrieved by the order dated 05.02.2015 passed in I.A. No.380 of 2014 in O.P. No.49 of 2012 by the Family Court-cum-IV Additional District and Sessions Judge at Vijayawada.

The revision petitioner and the respondent herein are the husband and wife, respectively.

Brief facts of the case are that wife earlier filed O.P. No.384 of 2008 under Section 12(1)(a) of the Hindu Marriage Act, 1955 (for brevity “the Act” seeking to annul the marriage performed on 02.03.2008 between the petitioner and the respondent on the ground that the marriage was not consummated due to impotence of the husband and that was held dismissed. Subsequently, she also filed another O.P. No.49 of 2012 under Section 13(1)(i-a) of the Act seeking dissolution of marriage on the ground of cruelty.

While so, the husband filed I.A. No.380 of 2014 in O.P. No.49 of 2012 under Order VII Rule 11 and Section 151 CPC seeking to reject the O.P. No.49 of 2012 on the ground of *res judicata*. The Court below vide its impugned order dated 05.02.2015 dismissed the same holding that O.P. No.49 of 2012 is not liable to be rejected. Assailing the same, husband filed the present revision petition.

The learned counsel appearing for the husband while reiterating the grounds that were urged before the Court below, *inter alia*, submitted that filing of subsequent O.P. No.49 of 2012 would constitute *res judicata* in fact, there are no difference with regard to the grounds taken in both the O.Ps., except the change of the provision of law. Therefore, the Court below was wrong in dismissing the application filed by the husband and the same is liable to be set aside. In support of his contention, he placed reliance in the case of **FORWARD ONCSTRUCTIN CO. AND OTHERS v. PRABHAT MANDAL (REGD.) ANDHERI AND OTHERS**^[1] and **DIRECT RECRUIT**

CLASS II ENGINEERING OFFICERS' ASSOCIATION v. STATE OF MAHARASHTRA AND OTHERS^[2]

On behalf of the wife, counter affidavit has been filed and denied the averments made by the husband except which are specifically admitted therein.

The learned counsel appearing for the wife categorically submitted that the grounds taken and the provisions under which the former and later O.Ps., were filed are altogether different and the Court below had categorically distinguished the same and rightly dismissed the application that was filed by the husband. He also submitted that though the O.P. No.384 of 2008 filed by the wife earlier was dismissed by the Court below, impugned order therein was challenged before the Hon'ble High Court in FCA. No.163 of 2012 and the same is pending before this Court. Therefore, he submits that no interference of this Court is required and this petition is liable to be dismissed.

Heard the learned counsel appearing for the revision petitioner/ husband and the learned counsel appearing for the respondent/wife and perused the material on record.

The point that arises for consideration is whether the Court below was right in passing the impugned order and whether it suffers from any legal infirmity?

Admittedly, the petitioner and the respondent are the husband and wife, respectively. It is also not in dispute that initially wife filed O.P. No.384 of 2008 that was dismissed on merits by the Court below and the same is under challenge before this Court in FCA. No.163 of 2012 pending consideration and inasmuch as, subsequently she also filed another O.P. No.49 of 2012, pending consideration before the Court below, wherein the husband filed an application in I.A. No.380 of 2014 that was dismissed by the Court below vide its impugned order. Challenging the same, the husband filed the present revision petition.

Since the controversial issue raised by the learned counsel on either

side is whether the O.Ps., that were filed by the wife hits the *res judicata*, this Court, *prima facie*, feels to consider the same.

The marriage was performed between the parties on 02.03.2008 and in the same year O.P. No.384 of 2008 was filed for annulment of marriage under Section 12(1)(a) of the Act on the ground of impotence. Except the sole ground there was no other ground for filing the said O.P. But, subsequently, she filed O.P. No.49 of 2012 under Section 13(1)(i-a) of the Act on the ground of cruelty. Mere alleging the cruelty is not sufficient to entertain O.P. No.49 of 2012 but it is not disputed by the other side that she pleaded in paras 8, 9 and 10 of said O.P., by giving narratives of the acts of the conduct of the petitioner and to show that she was treated with cruelty. Since the law provides different reliefs under different provisions for different grievances, *prima facie*, I am of the view that the wife's earlier grievance was that her marriage was not consummated because of her husband's impotency and therefore, she sought relief under the relevant provision provided under the law. Subsequent to thereafter, her grievance was that she was suffering from cruelty and those acts of cruelty were stated to have been narrated at paras 8, 9, and 10 of O.P. No.49 of 2012 that are not disputed for which she sought relief under the relevant provision provided under the law. Since the wife sought for different reliefs under different provisions for different grievances under different circumstances, this Court is of the view that the grounds raised in both the O.Ps., does not hit the *res judicata*.

The cases referred to above, wherein the learned counsel for the petitioner placed reliance, in support of his case, this Court has gone into them and feels that those are not supporting the case of the petitioner since the factual circumstances are different from each other.

At this stage, it is to be noticed that though the wife filed O.P. No.49 of 2012 in the year 2012 the husband chosen to file the I.A. No.380 of 2014 therein in the year 2014.

For the above reasons and since the grounds that were raised before this Court have already been properly appreciated by the Court below, I do

not see any reason to interfere with the impugned order as it does not suffer from any legal infirmity. Therefore, the present revision petition is liable to be dismissed.

Accordingly, this revision petition is dismissed.

Consequently, as a sequel, miscellaneous petitions, if any, stands closed. There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

Date: 24.08.2015

LSK

[\[1\]](#) (1986)1 Supreme Court Cases 100

[\[2\]](#) (1990) 2 Supreme Court Cases 715