

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

FCA Nos.232 AND 225 OF 2015 AND FCA (SR) No.33933 OF 2015,

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FCA MP No.490 OF 2015 IN FCA No.232 OF 2015,

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FCA MP Nos.491 AND 497 OF 2015 IN FCA No.225 OF 2015,

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AND

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FCA MP (SR) No.33935 OF 2015 IN FCA (SR) No.33933 OF 2015

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

F.C.A. Nos.232 and 225 of 2015 are preferred by the petitioner (husband) in F.C.O.P. (G.O.P.) No.264 of 2013 on the file of the Judge, Family Court - cum - V Additional District and Sessions Judge, Vishakapatnam, aggrieved of the orders, dated 20-08-2014 in I.A. No.563 of 2014, and 15-06-2015 in I.A. No.416 of 2015, respectively.

2. I.A. No.563 of 2014 is filed under Section 12 of The Guardians and Wards Act, 1890 with a prayer to issue interim injunction directing the respondent (wife) to handover custody of their minor son Master Pratap Teja Yasaswi to him pending disposal of the O.P. and the same was dismissed.

3. I.A. No.416 of 2015 is filed under Order - IX Rule - 9 of the Code of Civil Procedure, 1908 (CPC) seeking to set aside the order, dated 25-02-2015, by which the Family Court dismissed the F.C.O.P. (G.O.P.) for default, and the I.A. is allowed subject to condition that the appellant should appear before the Family Court whenever it directs, failing which, the F.C.O.P. stands dismissed. Aggrieved of the direction to appear before the Family Court whenever it directs, the appellant preferred FCA No.225 of 2015.

4. FCA (SR) No.33933 of 2015 is filed by the petitioner (husband) in I.A. No.504 of 2013 in I.A. (S.R.) No.3604 of 2013 in O.P. No.133 of 2011, aggrieved of the docket order, dated 16-09-2015, passed by the Judge, Family Court, Vijayawada, dismissing the application for default in seeking to set aside the *ex parte* order in O.P. No.133 of 2011, dated 16-08-2012, filed by the wife of the appellant under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights.

5 . During pendency of these matters, appellant filed applications, under Order - XXIII Rule - 3 of CPC in FCA MP No.490 of 2015 in FCA No.232 of 2015, FCAMP Nos.491 and 497 of 2015 in FCA No.225 of 2015 and FCA MP (SR) No.33935 OF 2015 in FCA (SR) No.33933 OF 2015, seeking to record their compromise in terms of the Memorandum of Compromise, dated 14-09-2015, filed along with the petitions.

6. In the memorandum of compromise in FCA MP No.497 of 2015 in FCA No.225 of 2015, it is stated that the appellant and the respondent have mutually agreed to seek dissolution of their marriage by filing appropriate petitions in O.P. No.166 of 2015 (O.P. No.262 of 2013 - old number), pending on the file of the Judge, Family Court at Vijayawada. The appellant also agreed for custody of their minor son to be with the respondent till he attains majority and

agreed to pay a sum of Rs.20,00,000/- (Rupees twenty lakhs only) through a demand draft towards her claims.

7. Both the parties, who are present in the open Court and identified by their respective counsel, requested to dispose of all the matters in terms of the Memorandum of Compromise referred to above.

8. Learned counsel for the appellant has produced original of the Demand Draft No.008549, dated 21-09-2015, of State Bank of India, Vijayawada Branch, for a sum of Rs.20,00,000/- (Rupees twenty lakhs only), and the same is handedover to the respondent and she acknowledged the same.

9. Having regard to the reasons stated in the Memorandum of Compromise and in view of the request made by the parties, FCA MP No.497 of 2015 in FCA No.225 of 2015 is allowed and, consequently, all the appeals including the appeal (S.R.) are disposed of in terms of the Memorandum of Compromise arrived at between the parties.

It is made clear that it is open for the parties to take appropriate steps before the Courts below for enforcement of the terms of the Memorandum of Compromise. The Memorandum of Compromise entered into between the parties shall form part of the decree.

There shall be no order as to costs.

10. In view of the above, since learned counsel for the appellant sought permission of the Court to withdraw FCA MP No.490 of 2015 in FCA No.232 of 2015, FCA MP No.491 of 2015 in FCA No.225 of 2015 and FCA MP (SR) No.33935 of 2015 in FCA (SR) No.33933 of 2015, permission is accorded, and, accordingly, they are dismissed as withdrawn.

11. Miscellaneous Petitions, if any, pending in these appeals

stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

September 29, 2015.

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