

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

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CIVIL REVISION PETITION No.2229 of 2015

Between:

Venkata Deepa

....Petitioner

and

Suresh Babu

....Respondent

JUDGMENT PRONOUNCED ON : 05.01.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.2229 of 2015

ORDER:

The petitioner is the wife and the respondent is the husband. The petitioner was stated to have filed F.C.O.P.No.155 of 2014 on the file of the learned Family Judge, S.P.S.R.Nellore, on 21.05.2014 for dissolution of their marriage. She engaged an Advocate and pursued her case. Ultimately, a decree of dissolution of marriage was passed on 06.09.2014. While passing the said decree P.W1 – the petitioner, was examined and another witness, P.W.2, was examined. Ex.A1 – Wedding Card and Ex.A2 – marriage photograph, were marked. Thereafter, she filed C.F.No.240 of 2015 on 27.01.2015 for cancellation of the said

decree passed on 06.09.2014. The said application was filed by another Advocate. The application was filed with the allegation that her husband took signatures on some papers in the month of May, 2014, stating that he was starting a business in her name and the signatures are required for getting Government permission. She further alleged that she believed the said words of her husband and signed on blank papers. Believing the words of her husband she went to the Family Court on 25.08.2014. She was sent to her parental home by her husband on 20.09.2014 and he vacated the house in Ongole Town where they were residing previously. Then she came to know that the papers signed by her were used for a decree of divorce and without her knowledge she fell prey to the evil designs of her husband. Later on she applied for the certified copy of the order and filed the said petition for cancellation of the decree. The said petition was dismissed by the learned Family Judge, Nellore, on 27.04.2015, with the following observations:

“The petitioner herself is examined as PW1 in FCOP No.155/2014 and also examined one K.Potha Raju in support of her contention that the respondent has harassed her and prayed to dissolve her marriage performed on 15.8.2013. This court after going through the evidence on record has allowed FCOP No.155/2014 on 6.9.2014 by dissolving the marriage of the petitioner and the respondent which was performed on 15.8.2013.

The petitioner is well educated lady and she deposed before the court that the respondent has harassed her cruelly. Basing on the evidence of the petitioner and PW2, this court has decreed FCOP No.155/2014.

The contention of the petitioner in the present case is that the respondent has played fraud on her and obtained her signatures for divorce. The petitioner herself has filed FCOP No.155/2014. When the petitioner herself prayed for grant of divorce, the question of playing fraud on the petitioner by the respondent does not arise, as such I hold that the present O.P cannot be registered and is liable to be returned.”

Challenging the aforesaid order, the present Civil Revision Petition is filed.

Though this Court called for a report from the learned Principal

District Judge, SPSR Nellore District, it did not disclose anything beyond what is available on record. At the time of consideration of the present Civil Revision Petition, this Court asked the learned Counsel appearing for the petitioner in F.C.O.P.No.155 of 2014 to be present, and accordingly, he was present on 28.12.2015. He filed an affidavit stating that the petitioner herself filed the petition and signed the papers after the contents were read over to her. He entered appearance after obtaining permission from the Court under Rule 16-B of the Family Court Rules. After completion of examination of P.W.2, the petitioner herself instructed him that there was no further evidence and, accordingly, he reported no further evidence. The evidence was closed and orders were pronounced on 06.09.2014. The petitioner, who was present in this Court, reiterated her stand that was taken in C.F.No.240 of 2015 in F.C.O.P.No. - of 2015.

Learned Counsel for the petitioner relied on a decision in **Balwinder Kaur v. Hardeep Singh**^[1] and the learned Counsel for the respondent relied on **Sunil v. Sakshi**^[2]. Learned Counsel for the petitioner submits that whenever fraud is alleged, it is the duty of the Court to examine the case thoroughly and the application should not be dismissed on the ground of technicalities. He particularly relied on the following observations in **Balwinder Kaur's** case (supra):

“8. The appellant has alleged fraud by her husband in getting her signatures on the petition for divorce and then bringing her to court to record her statement. Her case is she was unaware of what was happening and she in fact was duped in signing the petition and then appearing in the court as a witness. She said she never wanted divorce. During the course of hearing in this appeal, we enquired from learned counsel for the respondent if the respondent himself at any time wanted divorce and the reply was in the negative. The question then arises as to why the respondent allowed the proceeding to go ex-parte. There is no mention of the complaint filed by the appellant before the Senior Superintendent of Police and recording of the compromise between the parties and her own statement in the police on July 21, 1995. If the matter had been settled between the parties in July 1995 one may ask a

question as to what was the reason for the appellant to file a petition for divorce within six weeks of the compromise. The conduct of the respondent in proceeding with the petition filed by him for restitution of conjugal rights is also not understandable.

9. A petition for divorce is not like any other commercial suit. A divorce not only affects the parties, their children, if any, and their families but the society also feels its reverberations. Stress should always be on preserving the institution of marriage. That is the requirement of law. One may refer to the Objects and Reasons which led to setting up of Family Courts under the Family Courts Act, 1984. For the purpose of settlement of family disputes emphasis is "laid on conciliation and achieving socially desirable results" and eliminating adherence to rigid rules of procedure and evidence. These further note:

"The Law Commission in its 59th report (1974) had also stressed that in dealing with disputes concerning the family the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the courts in adopting this conciliatory procedure and the courts continue to deal with family disputes in the same manner as other civil matters and the same advisory approach prevails."

10. It is now obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or settlement between the parties to a Family dispute. It will be useful to note the qualifications and the method of selection of a Family Court Judge. That will be sub-sections (3) and (4) of Section 4 of the Family Courts Act:

"(3) A person shall not be qualified for appointment as a Judge unless he-

(a) has for at least seven years held a judicial office in India or the office of a member of a Tribunal or any post under the Union or a State requiring special knowledge of law; or

(b) has for at least seven years been an advocate of a High Court or of two or more such courts in succession; or

(c) possesses such other qualifications as the Central Government may, with the concurrence of the Chief Justice of India, prescribe.

(4) In selecting persons for appointment as Judges,-

(a) every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling are selected; and

(b) preference shall be given to women."

...

15. Section 23 of the Hindu Marriage Act mandates the court before granting decree for divorce, whether defended or not to satisfy itself (1) if the grounds for claiming relief exist and the petitioner is not taking advantage of his or her own wrong or disability for the purpose of such relief and (2) the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty. A duty is also cast on the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. Under sub-section (3) of Section 23 of the Act, the court can even refer the matter to any person named by the parties for the purpose of reconciliation and to adjourn the matter for that purpose. These objectives and principles govern all courts trying matrimonial matters. The judgment of the District Judge is silent of the learned Judge took into consideration all what is mentioned in Section 23 of the Act. A question also arises can a party defeat the provisions of sub-section (2) and sub-section (3) of Section 23 of the Act by remaining ex-parte and the court is helpless in requiring the presence of that party even if in the circumstances of the case so required. We are of the opinion that court can in such a situation require the personal presence of the parties. Though the proceedings were ex-parte in the case like this the court cannot be a silent spectator and it should itself endeavour to find out the truth by putting questions to the witnesses and eliciting answers from them."

Since fraud is alleged in the present case and the petitioner is available for deposition, the Family Court should have recorded her deposition and thoroughly examined the case while considering the application filed by the petitioner. The petitioner also submits that a wrong marriage card with wrong date was filed. In these circumstances, this Court is constrained to set aside the order in C.F.No.240 of 2015 in

F.C.O.P.No. - of 2015 on the file of the Family Court, S.P.S.R.Nellore District, dated 27.04.2015, and remand the matter to the learned Family Judge, S.P.S.R.Nellore District, to pass appropriate order after thorough enquiry and examination of the parties, if necessary, by summoning the respondent to the Court and taking all precautions that are necessary in matrimonial matters.

The Civil Revision Petition is, accordingly, allowed and the impugned order dated 27.04.2015 is set aside. The miscellaneous petitions pending in this Civil Revision Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

05.01.2016

vs

[\[1\]](#) (1997) 11 SCC 701

[\[2\]](#) (2015) 4 SCC 196