

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

CMA No.576 2016

Date:09.9.2016

Between:

Chinnam Kishore Kumar,
S/o Devadasu

..... Appellant

And:

Chinnam Kiranmayi @ Smily,
W/o Kishore Kumar

....Respondent

Counsel for the appellant: Mr. C.Raghu

Counsel for the respondent: None appeared

The Court made the following:

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Civil Miscellaneous Appeal arises out of order, dated 25.4.2016, in D.O.P.No.3 of 2013 on the file of the learned Principal District Judge, Krishna at Machilipatnam.

The appellant has filed the above-mentioned O.P. under Section-10(1)(vii) of the Divorce Act, 1869 (for short 'the Act') for dissolution of marriage by a decree of divorce. The plea of the appellant that as the marriage was not consummated, he is entitled to a decree of divorce, was conclusively rejected by the lower Court by observing that not only that the marriage was consummated, but also the couple were blessed with a child.

Today, at the hearing, the appellant is personally present.

Mr. C.Raghu, learned counsel representing the appellant, in all fairness submitted that his enquiries with the appellant revealed that the marriage was consummated and a child was born out of the wedlock between the appellant and the respondent and that the ground taken before the lower Court that the marriage was not consummated was not even known to the appellant. Learned counsel, however, submitted that since the respondent is living separately since the year 2012, that constitutes a fresh ground for the appellant for seeking dissolution of marriage under Section 10(1)(vii) of the Act and

that his client may be permitted to file a fresh application for divorce on this ground.

In the light of the above submissions of the learned counsel for the appellant, the Civil Miscellaneous Appeal is dismissed, however, with liberty to the appellant to avail a fresh remedy as proposed by his counsel.

As a sequel to dismissal of the Civil Miscellaneous Appeal, CMAMP.Nos.1169 and 1325 of 2016 filed by the appellant for interim relief are dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

09th September 2016

DR

