

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.5146 OF 2016

ORDER:

The revision is disposed of before issuing notice and before admission, which is maintained impugning the proceedings of the learned Judge, Family Court in F.C.O.P. No.1391 of 2015 for divorce filed by wife against revision petitioner saying despite they filed memo through GPA holder to grant divorce and also in disposal of M.C. No.357 of 2015 filed against him by his wife by virtue of memo for nothing to grant any maintenance.

2) Heard learned counsel for the revision petitioner. Perused the material on record.

3) There are no merits in the contention of the revision petitioner that the lower Court ought to have passed the decree for divorce in favour of wife saying marriage is irretrievably broken down for same is not a ground at all. What the Division Bench of this Court in ***Mrs.Padmakiran Rao vs B.Venkatarama Rao***¹ held of when marriage is irretrievably broken down, the Court could have been permitted the parties to represent through GPA holder for hearing to grant relief is not surviving to follow for irretrievable break down of marriage is not a ground or basis to grant decree of divorce, held in several later expressions of the Apex Court.

4) Here merely because husband stated no objection, that cannot be a ground to grant divorce, but for if at all to take a consent divorce therefrom by seeking conversion of the application into a consent divorce application under Section 13 (b) of the Act.

¹ 1995 (3) ALD 341 DB

There is nothing shown even of such a recourse sought for. Thus the only remedy is to seek for quick disposal on merits by proceeding day-to-day and to consider the relevancy of the said memo of the husband without any written statement to the divorce petition, as admission of the petition averments of the wife, within the meaning of Order VIII Rule 3 to 5 C.P.C and Sections 17 and 58 of Evidence Act in deciding the lis.

5) Having regard to the above, the divorce petition is pending despite the husband also not willing, the trial Court instead of postponing, take up the matter day-to-day as per letter and spirit of Order XVII C.P.C for expeditious disposal by recording the evidence of petitioner/ wife and also the respondent-husband representing through G.P.A holders being let in if any with right of cross objection to decide on merits.

6) Accordingly, the revision is disposed of. No order as to costs.

7) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.29.11.2016
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