

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

F.C.A.M.P.No.428 of 2016
in/and
FAMILY COURT APPEAL No.85 of 2014

20.10.2016

Between:

Smt.Arti Saxena

..Applicant/Appellant

And

Dharmender Saxena

..Respondent

Counsel for the applicant/appellant: Mrs. Anita Ahuja

Counsel for the respondent: Mr.Dharmender Saxena

Party-in-person

The Court made the following:

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

O.P.No.462 of 2013 filed by her on the file of the Judge, Additional Family Court, Hyderabad, for dissolution of marriage with the respondent under Section-13 (ia) & (ib) of the Hindu Marriage Act, 1955 (for short 'the Act') read with Section 7 of the Family Courts Act, 1984, having been dismissed, the petitioner in the said O.P. filed the present Family Court Appeal.

2. F.C.A.M.P.No.428 of 2016 is filed by the appellant for passing an order and decree of divorce by dissolving the marriage between the parties in terms of the memorandum of compromise. Along with the said application, a joint memorandum of compromise, dated 17.10.2016, is filed, a perusal of which shows that the same has been signed by the appellant as well as the respondent and also the learned counsel for the appellant. It is recited in the said memorandum of compromise that while the appellant filed O.P.No.462 of 2013 for dissolution of marriage, the respondent filed O.P.No.559 of 2013 for restitution of conjugal rights in the Family Court, Saket, New Delhi, and that the Hon'ble Supreme Court by its order, dated 03.07.2014, while transferring O.P.No.559 of 2013 (which was renumbered as O.P.No.1330 of 2014) from the Court at Saket, New Delhi to the Family Court at Hyderabad, has directed the latter Court to explore the possibility of amicable

settlement between the parties with or without the aid of the Mediation Centre at Hyderabad. It is further recited that upon intervention of the elders and well-wishers, both the parties have realized the futility of litigation and have withdrawn the allegations made against each other; that the respondent has paid a sum of Rs.1,90,000/- to the appellant towards permanent alimony, *vide* D.D.Nos.160314 and 160315; and that both the parties have agreed for dissolving their marriage that took place on 20.03.2012.

3. At hearing, both the parties are personally present along with the learned counsel for the appellant.

4. A perusal of the order under appeal shows that the respondent has remained *ex parte* before the Family Court and the appellant has adduced oral and documentary evidence in O.P.No.462 of 2013. The Family Court has dismissed the O.P., *vide* order, dated 13.04.2014, on the ground that as it was filed before the expiry of one year from the date of the marriage, it is not maintainable in view of the bar contained under Sub-Section (1) of Section 14 of the Act.

5. Mrs. Anita Ahuja, the learned counsel for the appellant, has submitted that while it is true that there was shortfall by a few days for completing one year after the marriage between the parties for presenting the O.P. for decree of divorce, the fact,

however, remained that the Family Court has registered the O.P. after completion of one year. She has explained that the marriage between the parties was solemnized on 20.03.2012, the O.P. was presented on 25.02.2013 and the same was numbered on 03.4.2013. She has further submitted that the appellant has filed an application on 25.02.2013, along with the O.P., under the proviso to Section-14(1) of the Act, to permit her to present the divorce O.P. before one year has lapsed since the date of the marriage, pleading exceptional hardship, and that, unfortunately, the Family Court has not considered the said application while dismissing the O.P. She has further submitted that the Family Court instead of granting express permission on the afore-mentioned application filed under the proviso to Section-14(1) of the Act, it has waited till the expiry of one year after the marriage was solemnized and numbered the O.P. thereafter.

At the hearing, we have elicited the views of the parties, who earnestly requested us to consider their request for dissolution of marriage on humanitarian grounds without taking the technicalities into account. We have considered this request of the parties with reference to the peculiar facts of this case. No doubt, Section-14(1) of the Act bars the Court to entertain any petition for dissolution of marriage before the

expiry of one year after the marriage is solemnized. However, this bar is not unexceptionable. The proviso to Section-14 (1) of the Act empowers the Court to entertain the application for dissolution of marriage even before the expiry of one year, where the petitioner pleads exceptional hardship or depravity on the part of the respondent. Indeed, such a pleading appeared to have been raised by the appellant in a separate application stated to have been filed along with the O.P. While there was a shortfall of 25 days for completing the required period of one year after solemnization of marriage for presenting a divorce petition, the fact, however, remains that the divorce O.P. was numbered after the completion of one year period. More over, the Family Court did not appear to have considered the separate application stated to have been filed by the appellant under the proviso to Section-14(1) of the Act.

In these exceptional facts of the case, we do not intend to stand on technicalities and reject the request of the parties for dissolving the marriage between the parties. Accordingly, we set aside the order and decree, dated 13.4.2014, in O.P.No.462 of 2013 on the file of the Judge, Additional Family Court, Hyderabad. As the parties filed joint memorandum for dissolution of marriage, we grant the decree by mutual consent

by treating O.P.No.462 of 2013 as having been filed under
Section-13-B of the Act.

FCAMP.No.428 of 2016 and FCA.No.85 of 2014 are,
accordingly, allowed to the extent indicated above.

C.V.NAGARJUNA REDDY, J

20th October, 2016
Ghn/Dr

M.S.K.JAISWAL, J

