

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos. 5438 & 5446 of 2015

COMMON ORDER:

These two revisions between the same parties arise out of two separate orders passed on the same day, 27.07.2015, by the learned Judge, Family Court-cum-IV Additional District Judge, Vijayawada of Krishna District, in two separate interlocutory applications in two separate OPs viz., I.A.No.127 of 2015 in O.P.No.217 of 2011 and I.A.No.140 of 2015 in O.P.No.614 of 2011.

1.1 These two revisions which were heard together are being disposed of by this Common Order in view of the fact that the genesis for the revisions is one and the core facts involved for consideration in these revisions are common.

2. I have heard the submissions of *Sri V.S.R.Anjaneyulu*, learned counsel for the revision petitioner/husband and of *Sri G.Vijaya Kumar*, learned counsel for the respondent/ wife.

3. To begin with, the facts, which are necessary to be stated as a prelude to this common order, in brief, are as follows:

The respondent/ wife filed the aforesaid O.P.No.217 of 2011 under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. She also filed M.C.No.80 of 2011. While so, the revision petitioner/ husband filed the other Original Petition, O.P.No.614 of 2011, against his wife for dissolution of marriage and for grant of divorce. All these matters pending on the file of the Family Court, Vijayawada, are

coming up together for disposal. On 28.01.2015, when all these matters came up together before the Family Court, Vijayawada, M.C.No.80 of 2011 was adjourned to 08.04.2015. However, O.P.No.614 of 2011 filed by the husband for grant of divorce was dismissed for default for his absence before the Court; and for the same reason, O.P.No.217 of 2011 filed by the wife seeking restitution of conjugal rights was decreed *ex parte*. The applications of the husband viz., (i) I.A.No.140 of 2015 filed under Order IX Rule 9 of the Code for setting aside the order of dismissal dated 28.01.2015 in O.P.No.614 of 2011; and, (ii) I.A.No.127 of 2015 filed under Order IX Rule 13 of the Code for setting aside the *ex parte* decree dated 28.01.2015 in O.P.No.217 of 2011 were dismissed, on the resistance of the wife, by the Family Court, Vijayawada, by the orders impugned in these revisions. Therefore, the husband, who is aggrieved thereof is before this Court.

4. The common contentions of the husband in the affidavits filed in support of both the applications, in brief, are as follows:

The wife's Original Petition for restitution of conjugal rights, the case for award of maintenance filed by her and his OP filed for grant of divorce, which are on the file of the Family Court, Vijayawada, were being adjourned together from time to time by the said Court. All these three matters are being posted together as a batch. However, on 28.01.2015, to which date all these three matters were posted, he could not get leave. The learned junior counsel of the learned counsel for the petitioner/ husband attended the Family Court on that day. In the batch of cases, the maintenance case was first called and was posted to 08.04.2015, as both the parties were absent. Since all the three matters

were being called as a batch and were being posted and adjourned together, the junior counsel, who attended the Court on that day, left the Court hall under the impression that the other two connected OPs were also adjourned to 08.04.2015. Subsequently, on verification of the Court's diary, it came to light that the Court called the three cases separately on that day and that after adjourning the M.C to 08.04.2015, the Court below dismissed the OP filed by the husband for grant of divorce for default as he was absent on that day before the Court below and as there was no representation for him in the said OP; further, in the OP filed by the wife for restitution of conjugal rights, he was set *ex parte* for the same reasons and an *ex parte* decree was passed against him and in favour of the wife on the same day in the said OP. The petitioner could not attend the Court below only for the reason that he was not granted leave. There was no representation on his behalf in the other two OPs, in the circumstances stated by him, but not on account of his negligence or wilful conduct. He has got strong case in both the OPs. If the order of dismissal passed in the OP filed by him and the *ex parte* decree passed in the OP filed by the wife are not set aside, he would suffer serious and irreparable loss. Hence, he filed the subject interlocutory applications.

5. The common contentions of the wife in the counters filed in both the applications of the husband, in brief, are as follows:

The material allegations in the husband's affidavits are false and invented. The three matters are not being posted as a batch and are not being called as a batch and are not being adjourned together by the Family Court from time to time. They are being called separately on the

dates of adjournment. So, the allegation that the three cases are being called as a batch and that after the MC was adjourned, the junior counsel was under the impression that all the three cases were adjourned together is false, and the said allegation is invented for the purpose of these petitions. Earlier, the OP filed by the husband was dismissed for default and was restored. He has not paid interim maintenance as directed by the Family Court. He has to pay arrears of interim maintenance in a sum of Rs.90,000/- as on June, 2015. Though he is having capacity to pay the said amount, he has intentionally and wilfully failed to pay the same. The allegation that he could not get leave on 28.01.2015 is also false and is invented for the purpose of these two petitions filed by him.

6. On merits and by the orders impugned in these revisions, the Family Court dismissed both the applications of the husband and refused to restore the husband's OP, which was dismissed for default, and to set aside the *ex parte* decree passed in the OP filed by wife for restitution of conjugal rights *inter alia* observing that the petitioner/ husband failed to give plausible explanation for his non-appearance on 28.01.2015 and that his requests in the applications are not *bona fide*.

7. At the hearing, the learned counsel for the husband while reiterating the case of the petitioner/ husband would submit as follows: The very fact that all the three cases are posted to one date, i.e., 28.01.2015 reflects that the matters are being posted and adjourned together as a batch from time to time. The petitioner gave a plausible explanation by submitting that he could not obtain leave on that day and that therefore, he could not attend before the Court and that the junior

counsel of his counsel, who attended before the Court on that day, left the Court after the Maintenance Case was adjourned thinking that the other two matters also were adjourned, as all the three matters are being called as a batch. However, on that day, the Family Court called the matters separately and after the counsel had left, dismissed the OP filed by the husband for default; and set him *ex parte* in the OP filed by the wife for restitution of conjugal rights and granted a decree in her favour on the same day in the said OP. However, the Maintenance Case was adjourned though both the parties were absent. Further, the orders were passed by the Family Court on 28.01.2015 and the subject interlocutory applications in both the OPs were filed by the husband on 02.02.2015, i.e., within five days of the dismissal of his OP for default and the *ex parte* decree in wife's OP. The trial Court ought to have seen that the promptitude with which the applications were filed is indicative of the fact that the requests of the husband are *bona fide*.

8. The learned counsel for the respondent/wife while reiterating the case pleaded by the wife in her counters and while supporting the orders of the Court below would contend that the matters are not being called as a batch and are not being adjourned as a batch from time to time and that the allegations in the affidavits of the husband filed in support of the petitions are all invented and that the Family Court was right in observing that no plausible explanation was given by the husband and that in any view of the matter, the husband who has not paid interim maintenance in a huge sum of nearly Rs.1,00,000/- is not entitled to any reliefs in the petitions and hence, the revisions are devoid of merit.

9. I have given earnest consideration to the facts and submissions.

10. It is not in dispute that the OP filed by the husband for grant of divorce, the OP filed by the wife for restitution of conjugal rights and the maintenance case filed by her against her husband are on the file of the Family Court, Vijayawada, and they all stood adjourned to 28.01.2015 and that on that day, as both the parties were absent, the MC of the wife was adjourned to 08.04.2015, but the OP filed by the husband for grant of divorce was dismissed for default for his absence and non representation on his behalf and that he was set *ex parte* for the same reason in the OP filed by the wife and the said OP was decreed *ex parte*. The husband gave an explanation that he could not attend the Family Court on that day as he was not granted leave. From the material on record, it is apparent that he is a resident of Chennai. He also gave an explanation that the junior counsel attended the Family Court on 28.01.2015 and that he left the Court after the maintenance case was called and adjourned as he was under the impression that the remaining two matters were adjourned to the same date, as all the matters are being called as a batch. Be that as it may. The petition filed by the husband for grant of divorce was dismissed for default, whereas the OP filed by the wife for restitution of conjugal rights was decreed *ex parte* on 28.01.2015. The husband promptly filed the subject applications on 02.02.2015 before the Family Court with the required promptitude. In the circumstances stated, the conduct of the husband can be termed as *bona fide* and his requests in the two applications deserve consideration more so as the requests were made by him immediately and diligently. In the facts and circumstances of the case, the explanation offered by him affords sufficient ground to exercise discretion. However,

considering the fact that the OPs are pending since the year 2011, it is just and fair to grant the reliefs by imposing adequate costs as compensation to the wife to offset the delay in hearing and disposal of the cases.

11. On the above analysis, this Court finds that the orders of the Family Court impugned in these two revisions brook interference and are liable to be set aside.

12. In the result, C.R.P.No.5438 of 2015 is allowed and the order dated 27.07.2015 passed in I.A.No.127 of 2015 in O.P.No.217 of 2011 is set aside and as a sequel, the said application is allowed and the *ex parte* decree dated 28.01.2015 on the file of the Family Court, Vijayawada, is set aside and the said OP is restored to file, subject to the condition that the husband shall, within two weeks from the date of receipt of a copy of this order, deposit to the credit of the said OP, a sum of Rs.15,000/- (Rupees fifteen thousand only) as costs. Failing such deposit, the said interlocutory application shall stand dismissed and the order impugned in the revision shall stand confirmed.

C.R.P.No.5446 of 2015 is allowed and the order dated 27.07.2015 passed in I.A.No.140 of 2015 is set aside. As a sequel, the said application is allowed and the dismissal order dated 28.01.2015 in O.P.No.614 of 2011 is set aside and the OP 614 of 2011 is restored to file, subject to the condition that the husband shall, within two weeks from the date of receipt of a copy of this order, deposit to the credit of the said OP, a sum of Rs.10,000/- (Rupees ten thousand only) as costs.

Failing such deposit, the said interlocutory application shall stand dismissed and the order impugned in the revision shall stand confirmed.

On the husband making such deposits, the wife is at liberty to withdraw the same without furnishing any securities.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

17th January, 2017

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