

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SMT JUSTICE T.RAJANI

FCA.No.279 of 2015

Date:07.3.2017

Between:

Gandreddi Bhanu Sri Akhila,
W/o G.Prasad

..... Appellant

And:

Gandreddi Prasad,
S/o Swamy Naidu

.....Respondent

Counsel for the appellant: Mr. V.Venugopala Rao

Counsel for the respondent: Mr. N.Sravan Kumar

For Mr. Challa Ajay Kumar

The Court made the following:

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

This Family Court Appeal is filed by the respondent in F.C.O.P.No.1110 of 2012 on the file of the learned Judge, Additional Family Court, (FAC) Judge, Family Court-cum-V Additional District and Sessions Judge, Visakhapatnam, whereby he has permitted the respondent-husband to withdraw the afore-mentioned F.C.O.P. filed under Section-7(1)(a) of the Family Courts Act, 1984 (for short 'the Act') read with Section-9 of the Hindu Marriage Act, 1955 for granting a decree for restitution of conjugal rights.

Mr. V.Venugopal Rao, learned counsel for the appellant, submitted that before FCOP.No.1110 of 2012 was dismissed at the instance of the respondent, the Family Court has not made any efforts for settlement as enjoined on it under Section-9 of the Act. He has further submitted that the matter was, at the first instance, referred for conciliation and initially, the respondent has agreed for taking the appellant back and that, in the afternoon session, the respondent has reported to the Court that he is not interested in pursuing his F.C.O.P. and on this representation, the Family Court has dismissed the F.C.O.P. as not pressed.

Mr. N.Sravan Kumar, learned counsel representing Mr. Challa Ajay Kumar, the learned counsel for the respondent, submitted that though initially, his client was interested in taking the appellant back with him, due to the non-co-operative attitude of the appellant besides her precipitating the disputes by initiating frivolous litigation under the Domestic Violence Act and also by filing a suit for partition in the name of her minor child, the respondent has lost interest to live with her and therefore, the respondent has requested the Family Court to dismiss the F.C.O.P. as not pressed.

As noted above, it is the respondent who filed the F.C.O.P. for restitution of conjugal rights. After such filing, if the respondent, for whatever reason, has lost interest in pursuing the same, the Family Court cannot force him to pursue the F.C.O.P.

As rightly submitted by the learned counsel for the appellant before passing any order, a duty lies on the Family Court to make efforts for settlement. Neither party has placed before us the relevant record to indicate as to what actually transpired before the Family Court.

In the light of the afore-mentioned facts and the submissions of the learned counsel for the parties, we have

summoned both parties and made efforts to convince the respondent to take the appellant back with him. He has, however, expressed his strong reservation against this proposal. Therefore, even if the Family Court has failed in its efforts to reconcile the differences between the parties, we have tried to convince the respondent to take the appellant back, but we are unsuccessful in this regard.

It is brought to our notice that after F.C.O.P.No.1110 of 2012 was dismissed as not pressed, respondent has filed as many as three O.Ps including an OP filed for dissolution of marriage with the appellant. If the appellant has reasonable grounds to resist the said O.Ps., she shall be free to do so. In view of this subsequent event, the grievance of the appellant against the Family Court, for not following the provisions of Section-9 of the Act in its letter and spirit, no longer survives. We, however, make it clear that mere dismissal of FCOP.No.1110 of 2012, on the ground that the same is not pressed, does not disentitle the appellant from raising all legally permissible pleas to resist the O.P. filed by the respondent for dissolution of marriage.

Subject to the above observations, the Family Court Appeal is dismissed.

As a sequel to dismissal of the appeal, FCAMP.No.557 of 2017 stands dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.RAJANI

07th March, 2017

DR

