

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

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HON' BLE SRI JUSTICE N. BALAYOGI

F.C.A. No. 295 of 2017

JUDGMENT:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This appeal is filed assailing the decree and order dated 20.03.2017 in I.A.No. 476 of 2016 in O.P.No. 825 of 2015 passed by the Judge, Additional Family Court, City Civil Court, Hyderabad whereby the aforesaid application filed by the appellant was dismissed.

The brief facts of the case are that the marriage between the appellant and the respondent was solemnized according to the Hindu rites and customs on 25.08.2013. Thereafter, the respondent-husband filed O.P. No. 825 of 2015 seeking dissolution of the marriage and the appellant attended the Court on 18.04.2016, but the matter was adjourned to 21.05.2016 at the request made by the respondent. However, the respondent - husband filed I.A.No. 439 of 2016 seeking advancement of hearing of the O.P. from 21.05.2016 to 21.04.2016, and accordingly, the petition was allowed by order dated 19.04.2016 advancing the hearing to 21.04.2016 on which day the respondent was examined as PW1 and Exs.P1 to P5 were marked on his behalf. The main O.P. was posted for orders on 26.04.2016, however the O.P. was decreed *ex parte* on the said date itself. Immediately,

after coming to know about the *ex parte* decree, the appellant filed an application in I.A.No.476 of 2016 seeking to set aside the *ex parte* decree and contested the matter, however her application was dismissed vide order dated 20.03.2017 which is under challenge in the present appeal.

The learned counsel for the appellant has submitted that the trial Court erred in allowing I.A.No. 439 of 2016 for advancement of the date of hearing O.P.No. 825 of 2015 for *ex parte* evidence from 21.05.2016 to 26.04.2016 thereby curtailed the right of the appellant to file an application under Order IX Rule 7 CPC resulting in grave injustice to her. It is further contended that the trial Court failed to see that the application under Order IX Rule 13 CPC was filed by the appellant at the earliest opportunity on coming to know of the *ex parte* decree and it has also failed to appreciate the *mala fide* action of the respondent in seeking advancement of the date of hearing the O.P. even after observing the presence of the appellant in the Court on 18.04.2016.

In spite of service of notice on the respondent, nobody has appeared on his behalf. It seems, the respondent has nothing to say to oppose the present appeal.

Keeping in view the grounds raised in the instant appeal and the submissions of the learned counsel for the appellant, we hereby set aside the order dated 20.03.2017 in I.A.No. 476

of 2016 in O.P.No. 825 of 2015. Consequently, the *ex parte* order dated 26.04.2016 passed in O.P.No. 825 of 2015 is set aside and the matter is remanded to Family Court for fresh trial and the trial Court is directed to decide the O.P.No. 825 of 2015 afresh on merits after giving opportunities to the parties.

Accordingly, the appeal is allowed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

14.09.2017

bcj

SURESH KUMAR KAIT, J

N. BALAYOGI, J

