

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CIVIL MISCELLANEOUS APPEAL No.413 of 2017

07.07.2017

Between:

Sattenapalli Lilly Grace

..Appellant

and

Sattenapalli John Paul @ Venkateswarlu

..Respondent

Counsel for the appellant: Mr.T.Prabhu Dasu

Counsel for the respondent: Mr.T.S.N.Murthy

The Court made the following:



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

This Civil Miscellaneous Appeal arises out of order, dated 02.12.2016, in I.A.No.157 of 2016 in O.P.No.516 of 2015 on the file of the Judge, Family Court-cum-IV Additional District and Sessions Judge, Vijayawada.

2. We have heard the learned counsel for the parties and perused the record.

3. The respondent filed O.P.No.516 of 2015 under the Divorce Act, 1869, seeking decree for dissolution of the marriage with the appellant on the ground that she subjected him to cruelty. The appellant was set *ex parte* on 21.01.2016 and *ex parte* decree of divorce was granted on 27.01.2016 by the Family Court. Within the period of limitation, the appellant filed the aforementioned I.A. under Order IX Rule 13 read with Section 151 C.P.C. for setting aside the *ex parte* decree. The Family Court has dismissed the said application, by the order under appeal, on the ground that sufficient cause has not been shown by the appellant for her absence.

4. In the affidavit filed in support of her I.A., the appellant stated that the O.P. filed by the respondent for divorce was referred to Lok Adalat for amicable settlement and that before the Lok Adalat, the appellant expressed her unwillingness to agree for dissolution of the marriage and requested that she may be provided with an opportunity to contest the O.P. on merits.

5. In our opinion, the Family Court has failed to display a liberal approach in considering the application filed by the appellant for setting aside the *ex parte* decree for dissolution of marriage. The Family Court

does not appear to have realized the fact that the entire future of the appellant is at stake and if she is not given an opportunity of contesting the O.P. on merits, she would suffer irreparable injury. As the consequence of the decree for dissolution of the marriage being far reaching, the Family Court ought not to have made a pedantic approach in insisting on satisfactory explanation for not contesting the O.P., more so when there is not much gap between the date on which she was set *ex parte* and the date on which the *ex parte* decree was passed and the appellant has shown diligence in filing the application for setting aside the *ex parte* decree within the period of limitation.

6. In these facts and circumstances of the case, order, dated 02.12.2016, in I.A.No.157 of 2016 in O.P.No.516 of 2015 on the file of the Judge, Family Court-cum-IV Additional District and Sessions Judge, Vijayawada, is set aside; I.A.No.157 of 2016 in O.P.No.516 of 2015 is allowed and O.P.No.516 of 2015 is restored to file for disposal on merits. The Civil Miscellaneous Appeal is, accordingly, allowed.

7. As a sequel to allowing the appeal, C.M.A.M.P.No.708 of 2017 filed by the appellant for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

M.S.K.JAI SWAL, J

07th July, 2017
GHN