

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2293 of 2018

ORDER:

This civil revision petition under Article 227 of the Constitution arises out of the order dated 02.04.2018 passed by the Family Court, Ranga Reddy District at L.B.Nagar, in IA(SR).No.1152 of 2018 in FCOP No.1327 of 2017. The said IA was filed by the petitioner/husband for conversion of the FCOP filed by him under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955'), into one under Section 13-B thereof seeking dissolution of the marriage between the parties by way of a decree of divorce by mutual consent and for substitution of paras 5 to 10 in the supporting affidavit in the place of sub-paras 1 to 14 of para III in the FCOP. By the order under revision, the Family Court refused to entertain the said petition on the ground of maintainability. Aggrieved thereby, the petitioner/husband is before this Court.

Perusal of the record reflects that the aforestated FCOP was filed by the petitioner/husband before the Family Court under Section 13(1)(ia) of the Act of 1955 seeking dissolution of his marriage with the respondent/wife by way of a decree of divorce on the ground of cruelty. The matter was however settled out of Court between the parties resulting in execution of the Deed of Terms of Compromise-cum-Settlement dated 10.01.2018 by and between them. In terms of the same, the parties decided to secure a decree of divorce by mutual consent and do away with the earlier allegations made by the petitioner/husband against the respondent/wife in the subject FCOP. It is owing to this compromise that the petitioner/husband filed the present IA seeking leave of the Court to convert the subject FCOP into one under Section 13-B of the Act of 1955.

Sri P.Harinath Reddy, learned counsel for the petitioner/husband, and Smt. B.Kavita Yadav, learned counsel for the respondent/wife, would inform this Court that the petitioner/husband is residing in the United States of America and is unable to attend the Family Court for the purpose of presenting the subject IA. The Family Court is however refusing to entertain the same, ignoring the fact that he is represented by his father by virtue of the General Power of Attorney dated 08.04.2017, whereby he was specifically authorised to appear before the relevant Courts and sign and verify petitions on his son's behalf. Learned counsel would submit that despite production of the said General Power of Attorney, the Family Court is insisting upon the presence of the petitioner/husband before acting upon the prayer in the subject IA. Owing to the present visa restrictions imposed in the United States of America, he is however not in a position to return to India for the purpose of presenting the petition by himself before the Family Court.

It is no doubt true that Section 13-B of the Act of 1955 and the provisions of the Family Court Act, 1984, require the parties to be present before the Family Court. However, when the dispute is practically settled by virtue of the Deed of Terms of Compromise-cum-Settlement dated 10.01.2018 and the spouses have agreed to settle for a divorce by mutual consent, they only need to go through the process and no *//s*, as such, remains for adjudication on merits. That being so, the Family Court ought not to have insisted upon strict compliance with procedure. Be it noted that the procedure is the handmaid of justice and not its mistress.

In that view of the matter, the civil revision petition is allowed setting aside the order under revision. The Family Court, Ranga Reddy District at L.B.Nagar, shall entertain the subject IA on the strength of the General Power of Attorney dated 08.04.2017 executed by the

petitioner/husband in favour of his father, who shall remain present before the Court. Further, as the parties have been staying separately since 2015 and both the learned counsel would impress upon this Court that there is no possibility of a reconciliation between them, the Family Court shall dispense with the statutory waiting period of six months and proceed with the matter forthwith, by examining the petitioner/husband through skype/video conferencing and the respondent/ wife in person.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

20th April, 2018
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