

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

FCA.No.220 of 2017

Date:01.02.2018

Between.

Vijay Kumar George Bernard,
S/o George Antony Bernard

.....Appellant

And.

Gullipalli Sumalatha,
W/o Vijaya Kumar George Bernard
and another.

.....Respondents

Counsel for the appellant: Mr. T.D.Phani Kumar

Counsel for the respondents: Mr. Kuriti Bhaskar Rao

The Court made the following:

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

This Family Court Appeal is filed against order, dated 29.11.2016, in FCOP.No.996 of 2016 on the file of the Judge, Family Court-cum-V Additional District and Sessions Judge, Visakhapatnam.

We have heard Mr. T.D.Phani Kumar, learned counsel for the appellant and Mr. Kuriti Bhaskar Rao, learned counsel for the respondents.

The marriage of the appellant and respondent No.1 was annulled by mutual consent under order, dated 10.12.2015, in FCOP.No.110 of 2015 on the file of the Judge, Family Court-cum-V Additional District and Sessions Judge, Visakhapatnam. The said order was passed on a purported mutual settlement. A few days thereafter, respondent No.1 has filed FCOP.No.986 in the same Court, which dissolved the marriage of the parties, by *inter alia* stating that the appellant has forcibly obtained the consent of respondent No.1, based on which, he has got the marriage annulled under Section-10A of the Divorce Act. She has further averred that she has filed a separate O.P. for setting aside the decree of dissolution of marriage. She has sought for award of maintenance of Rs.25,000/- per month at the rate of Rs.12,500/- each to herself and respondent No.2-the minor child.

By order, dated 29.11.2016, while placing on record that the appellant remained *ex parte*, the Family Court has partly allowed the claim of respondent No.1 by granting monthly maintenance @ Rs.10,000/- to respondent No.1 and Rs.8,000/- to respondent No.2. Feeling aggrieved by the said order, this appeal is filed by the husband of respondent No.1.

The main ground on which this appeal has been filed is that the Family Court has not followed the procedure of service of notice on the persons working in the defence, as envisaged under Order-V of the Code of Civil Procedure and that as a result thereof, he could not enter appearance and contest the O.P.

Mr. Kuriti Bhaskar Rao, learned counsel for the respondents, has not disputed the said plea raised by the appellant.

This case involves seriously disputed question of fact, *viz.*, whether the appellant forcibly obtained divorce from respondent No.1 by mutual consent. Unless a *prima facie* finding is rendered by the Family Court on this aspect, the respondents may not be entitled to grant of maintenance as, respondent No.1 has purportedly foregone her right to maintenance under the terms and conditions of compromise, based on which, the marriage was dissolved. As the appellant did not have proper opportunity of pleading his case on merits

before the Family Court, we are of the opinion that the order under appeal is liable to be set aside.

The appeal is, accordingly, allowed by setting aside the order, dated 29.11.2016, in FCOP.No.996 of 2016 on the file of the Judge, Family Court-cum-V Additional District and Sessions Judge, Visakhapatnam.

Mr. T.D.Phani Kumar, learned counsel for the appellant, has agreed that his client will enter appearance through an advocate in the said FCOP in order to obviate the necessity of sending a formal notice to him. The Court below after giving notice to the learned counsel for both parties and after giving an opportunity of being heard to them, shall dispose of the said F.C.O.P. on merits.

As a sequel, order, dated 11.7.2017, in FCAMP.No.339 of 2017, and order, dated 13.9.2017 are vacated and FCAMP.No.339 of 2017 and IA.No.2 of 2018 are dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

01st February, 2018

DR