

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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.649 of 2018

14.11.2018

Between:

Nidadavolu Siva Ramakrishna

..Appellant

and

Nidadavolu Nandini

..Respondent

Counsel for the appellant: Ms.E.Karunasri for Mr.B.Krishna Kumar

Counsel for the respondent: Mr.S.Siva Bhami Reddy

The Court made the following:



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

This Civil Miscellaneous Appeal is filed against order and decree, dated 18.01.2018, in H.M.O.P.No.154 of 2016 on the file of learned Senior Civil Judge, Ramachandrapuram.

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

3. The appellant filed the aforementioned H.M.O.P. under Section 9 of the Hindu Marriage Act, 1955, seeking decree for restitution of conjugal rights. A perusal of the order of the Court below shows that it has, *inter alia*, observed with reference to the deposition of the respondent given as R.W.1 as under.

“In the cross examination of R.W.1, she categorically deposed that she is ready to lead marital life with the petitioner herein that itself shows that she never deserted the petitioner and the petitioner himself deserted the respondent and also the petitioner miserably failed to prove that he is trying to take back the respondent to her matrimonial home. As such, the petitioner is not entitled any restitution of conjugal rights as prayed for...”

We perceive the reasoning of the Court below as wholly perverse. When the appellant himself has filed the H.M.O.P.

for restitution of conjugal rights and the respondent has agreed to join the matrimonial home and expressed her willingness to lead the marital life with the appellant, the alleged past conduct of the appellant has no relevance whatsoever.

4. Even during the hearing of this appeal, the learned counsel for the respondent, on instructions from his client, has submitted that she is ready and willing to join the company of the appellant without any condition. The learned counsel for the appellant has also submitted that his client is willing to take back the respondent into his matrimonial life.

5. In the light of the stand taken by the parties as above, the appellant is entitled to succeed in the appeal.

6. Accordingly, the order under appeal is set aside. H.M.O.P.No.154 of 2016 is decreed and the Civil Miscellaneous Appeal is, accordingly, allowed.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

14th November, 2018

GHN