

THE HON'BLE MS. JUSTICE J. UMA DEVI

CRP NOs. 5043 and 5083 of 2018

COMMON ORDER:

Heard learned counsel of the petitioner.

Seeking dissolution of marriage and for appointment of guardian of Master Avadutha Hemnesh, the revision petitioner filed FC OP No. 127 of 2015 under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 and GW OP No. 128 of 2015 under Section 6 of the Hindu Minority and Guardianship Act, 1956 before the Family Court, Khammam. While the said cases were coming up for cross-examination of the petitioner, he filed two separate applications in both the cases to recall him for marking of certain documents and for appointment of commissioner for recording his cross-examination. As the said applications were dismissed, he came before this Court by preferring the present revision petitions.

This Court ordered notice to the respondent. Despite service of notice, she did not choose to enter appearance either personally or through a counsel.

The reasonings given by the Family Court to dismiss the applications as reflected in para-8 of the impugned order read as under,

“8. As seen from the record, the chief affidavit of PW1 was filed in the month of January, 2015. From then onwards, several adjournments were taken by PW1 for appearance before the Court. As seen from the record, the matter was transferred from Family Court, Ranga Reddy District. Even after transferring the matter, the petitioner appeared before the Court in the month of June, 2016. Since then onwards, the matter is posted for the cross-examination of PW1, but PW1 did not appear before the Court. On 10.9.2017, the present counsel filed no objection Vakalat and then documents were marked.

Thereafter, petitions were filed for amendment of the pleadings. The same were allowed, but PW1 did not appear before the Court on 10.4.2018. As such, the contents of the petition given by the counsel that on 10.4.2018 PW1 appeared before the Court is not at all correct. On 1.5.2018 only, PW1 appeared, but the counsel did not appear. Then the matter was adjourned for making of documents. Since from that day onwards, no documents are marked and PW1 did not appear before the Court. As such, the evidence of PW1 was closed. Since the petitioner's counsel stated that the health condition of the petitioner is not good and unable to move from bed, but no such document is filed to that effect. In such circumstances, there is no ground to recall PW1 for the purpose of marking documents and for cross-examination. The prayer for appointment of Advocate-commissioner has to be sought in a separate petition. But the petitioner's counsel sought two distinct reliefs in one petition. As such this petition is liable to be dismissed."

The counsel of the petitioner states that the Judge, Family Court has taken the view that two distinct reliefs are sought in one application. He also states that after dismissal of his applications filed to recall him for marking of documents and for appointment of commissioner in both the OPs, he has filed similar applications, but they are not entertained by the Family Court. The counsel of the petitioner states that due to the mistake committed by his counter-part who has appeared for the petitioner in the lower Court the two distinct reliefs are claimed in one application. He also states that the petitioner, who could not appear before the Court below on 25.1.2018 due to ill-health, recovered now and is able to give evidence.

Taking into consideration of the aforementioned aspects, I feel it appropriate to allow the revision petitions by setting aside the impugned orders. The petitioner is at liberty to make a fresh application in both OPs

to recall him for the purpose of marking of documents which he intends to bring on record and on presentation of such application by the petitioner, the court below shall dispose of them as per law.

The revision petitions are accordingly allowed. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt. 23.11.2018
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