

**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE T. AMARNATH GOUD**

FCA.No. 466 OF 2017

J U D G M E N T : [O R A L]

[Per the Hon'ble Sri Justice Suresh Kumar Kait]

Notice sent by the appellant to the respondent at her address pursuant to the order dated 14/12/2017 has been returned un-served with an endorsement, "respondent is not staying at the given address". Thereafter, notice sent by the appellant to the respondent at her office address pursuant to the order passed by this Court on 03/8/2018 has been refused by the respondent and under the law it is "deemed service".

2. Vide the present appeal, the appellant has challenged the order dated 08/11/2017 passed in OP.No. 1242 of 2016 by the Additional Family Court, Hyderabad, whereby the petition filed by the appellant under section 13 [1] [ia] of the Hindu Marriage Act, seeking to grant decree of divorce has been dismissed on the ground that the appellant earlier filed O.P.No. 2038 of 2015 on the file of Family Court, Ranga Reddy district at L.B. Nagar. The contents of the said O.P. regarding the alleged cruelty by respondent towards the appellant are one and the same. On the other hand, on the very same grounds, appellant sought initially decree of restitution of conjugal rights calling upon respondent to live with him. Moreover, the appellant has not pressed the said

petition and filed the present petition seeking divorce. Section 23 [1] [b] of the Act, lays down that when a spouse condoned the acts of cruelty of other spouse, court cannot grant decree of divorce. The fact remains that on perusal of the O.P. filed under section 9 of the Hindu Marriage Act, 1954 in OP.No. 2038 of 2015, the appellant made allegation of cruelty against the respondent, however, shown the desire to join with the respondent. Since there is no averment made in OP.No. 2038 of 2015 that he has condoned the cruelty and other acts committed by the respondent, therefore, O.P.No. 2038 of 2015 has been dismissed as “*not pressed*” vide order dated 22/8/2016 with liberty to file an application for divorce.

3. Accordingly, liberty was granted by the trial court to file the divorce petition, therefore, in this situation the divorce petition has to be adjudicated by giving opportunity to both sides on merits.

4. Accordingly, we hereby set aside the order dated 08/11/2017 passed by the Additional Family Court, Hyderabad, in O.P.No. 1242 of 2016 and remand to the trial court to decide the matter afresh and pass appropriate order on merits and in accordance with law, without reference to Section 23 [1] (b) of the Hindu Marriage Act, within six months from the date of receipt of a copy of this judgment.

5. With the above direction, this appeal is disposed of. There shall be no order as to costs.

6. As a sequel, miscellaneous petitions if any, pending in this appeal shall stand closed.

JUSTICE SURESH KUMAR KAIT.

JUSTICE T. AMARNATH GOUD

06/09/2018
I s L



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[RESULT : APPEAL IS DISPOSED & REMANDED]

[Per the Hon'ble Sri Justice Suresh Kumar Kait]



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