

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.2037 of 2018

ORDER:

This Revision is filed assailing the order dt.19-12-2017 in I.A.No.274 of 2017 in M.O.P.No.59 of 2015 of the Principal Senior Civil Judge at Kothagudem.

2. Petitioner herein is wife of respondent.
3. Respondent filed the O.P. for dissolution of marriage between the parties alleging mental cruelty and harassment by petitioner.
4. Counter-affidavit was filed by respondent opposing grant of relief to petitioner and making allegations against the petitioner.
5. After matter proceeded for some time in the Court below, the respondent filed I.A.No.274 of 2017 stating that he intends to withdraw the O.P. with leave of the Principal Senior Civil Judge, Kothagudem for filing the same in Courts at United States of America since himself and the petitioner are both residing in United States of America.
6. On 19-12-2017, after hearing both sides, the Court below recorded that the respondent intends to file/initiate fresh proceedings for divorce in the United States of America, and that both parties are admittedly residing in United States of America, and so he is permitted to withdraw the O.P. on payment of costs of Rs.10,000/- to petitioner.

7. Assailing the same, this Revision is filed.

8. It is the contention of the learned counsel for petitioner that respondent could not have been permitted to withdraw the O.P. with leave to file before the Courts at United States of America since he already surrendered before the Courts at India and it amounts to permitting forum hunting and is also abuse of process of law by the respondent.

9. It is contended that Courts at United States of America do not have jurisdiction between the petitioner and respondent as marriage was held at India and parties are Hindus. It is also contended that the Court below did not keep in mind the parameters contained in Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908 and that it ought to have restrained the respondent from instituting any suit or proceedings in terms of Order XXIII Rule 4 C.P.C.

10. Learned counsel for petitioner also relied upon decision of the Supreme Court in **K.S.Bhoopathy and others Vs. Kokila and others**¹ and decision of High Court of Andhra Pradesh in **G.Achanna Vs. P.Pratap Reddy**².

11. He also contended that petitioner had already initiated proceedings in Courts at United States of America before he filed I.A.No.274 of 2017 and that having already initiated the process there,

¹ AIR 2000 SC 2132

² 2007(6) ALT 635

he could not say that he was intending to initiate proceedings in Courts in United States of America.

12. However, it is not disputed by the learned counsel for petitioner that both petitioner and respondent are residents of United States of America and the O.P. had been filed in the Court of Principal Senior Civil Judge, Kothagudem by the respondent. It would cause much inconvenience to the parties to attend the hearings in that place as and when directed by the Court to appear since both have to come from USA every time.

13. No doubt the Supreme Court in **K.S.Bhoopathy** (*1 supra*) held that to grant leave to initiate proceedings, the Court must be satisfied either that there must be a formal defect which would make the suit fail, or that there are sufficient grounds for allowing a plaintiff to institute a fresh suit for the subject matter of suit or part of a claim. The Supreme Court held that the Court dealing with such application has a duty mandated under the Code to take into consideration relevant aspects of the matter including desirability of permitting the party to start a fresh round of litigation on the same cause of action. In the said case, there was an application under Order XXIII Rule 1(3) C.P.C. filed at the stage when the matter had been decided by both the trial Court as well as the first appellate Court and when the matter had come up by way of Second Appeal. The Supreme Court therefore observed that the grant of leave to file fresh suit allows the unsuccessful plaintiff to avoid the decree or decrees against him and

seek a fresh adjudication of the controversy on a clean slate may result in the contesting defendant losing the advantage of adjudication of the dispute by the Courts below, and grant of permission for withdrawal of a suit with leave to file a fresh suit may also result in annulment of a right vested in the defendant or even a third party.

14. In the instant case, no doubt the matter had progressed to some extent in the Court below, but there was no adjudication in the Court below and even the trial has not been completed.

15. In **G.Achanna** (2 supra), an application for withdrawal of suit was filed 10 years after filing of the suit, and the High Court of Andhra Pradesh did not agree to grant leave to petitioners therein who had challenged the order passed by the Court below which refused to grant leave. In fact in that case reason given was that the petitioner had an apprehension that he would fail in the suit and the Court held that failure in a suit cannot be the sole ground on which the discretion by the Court can be exercised under Order XXIII Rule (1)(3)(b) C.P.C.

16. In the instant case, since both parties are residents of United States of America, it would be convenient to parties to pursue the proceedings in the Courts in the said country, and since the petitioner has been adequately compensated by costs of Rs.10,000/-, I hold that the order passed by the Court below does not warrant any interference under Article 227 of Constitution of India.

17. Therefore, the Revision fails and it is accordingly dismissed at the stage of admission. No costs.

18. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-01-2019

Vsv