

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.372 OF 2017

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the petitioner aggrieved by the order dated 01.11.2016 passed in I.A.No.665 of 2015 in F.C.O.P.No.349 of 2015 by the learned Judge, Family Court, Secunderabad, wherein the Court below allowed the application filed by the respondent-wife to set aside the *ex parte* decree and judgment dated 04.09.2015 passed in F.C.O.P.No.349 of 2015.

2. Heard learned counsel for the revision petitioner, learned counsel for the respondent and perused the record.

3. Learned counsel for the revision petitioner would contend that the impugned order was passed on the strength of the affidavit filed by the Advocate representing the respondent-wife. It is also contended that the capacity of the Advocate representing the respondent-wife is only *amicus curiae*. He cannot step into the shoe of the respondent-wife and file an affidavit in support of her case. He relied on a decision reported in *Sadhana Patra v. Subrat Pradhan*¹.

Para 9 of the said decision reads as follows:

“The second question raised before this Court is the role of *amicus curiae* in a proceeding before the Family Court appointed under proviso to Section 13 of the Act. Shri Mohanty, learned counsel appearing for the opposite party and Sri Jagannath Patnaik, Senior Advocate who had been requested to assist the Court in this regard relied upon a decision of the Rajasthan High Court in the case of *Sarla Sharma v. State of Rajasthan* reported in I(2002) DMC 409 (DB) as well as AIR 2002 Raj 301. Referring to the Family Court Rules of the State the Division Bench of the Rajasthan High Court in para-8 of the judgment has

¹ AIR 2006 ORISSA 105

laid down the basic distinction between the legal practitioner appearing as an *amicus curiae* and a lawyer/advocate appearing for the individual party.”

It is also contended that though there is a conditional order to file counter in the O.P., which was filed for grant of divorce, without there being any counter, the Court below allowed the application, which is erroneous and ultimately prayed to set aside the impugned order.

4. On the other hand, learned counsel for the respondent-wife would contend that though the Advocate who was representing before the Family Court was *amicus curiae*, the facts and circumstances which lead to passing of the decree of dissolution of marriage were well within his knowledge. Therefore, he was justified in filing the affidavit. The Court below having examined the contentions has rightly passed the impugned order. Further, since a transfer application was filed before the Apex Court, no counter was filed along with the impugned I.A. and ultimately supported the impugned order.

5. As seen from the averments of the affidavit filed in support of I.A.No.665 of 2015, the Advocate representing the respondent-wife categorically stated several circumstances which are within his direct knowledge with regard to filing of I.A., memo, etc., and also given the details with regard to filing of the transfer petition before the Hon’ble Apex Court, which reads as follows:

“Diary No.26873 of 2015 has been numbered as Transfer Petition(s)(Civil) No.1346-1347/2015 before the Hon’ble Supreme Court of India and on 07.09.2015 the Hon’ble Supreme Court granted stay of all proceedings in O.P.No.225 of 2015 and O.S.No.349 of 2015.”

6. In the course of submissions, it is brought to notice of this Court that the transfer petition was allowed subject to the result of this civil revision petition. On a perusal of the affidavit filed by the learned counsel for the respondent before the Court below, it reveals that the learned counsel stated only the material facts which are within in his direct knowledge. He did not state anything which are not in his knowledge and are in the direct knowledge of the respondent-wife. Furthermore, the respondent-wife was not aware of the proceedings that went on during the period in question. Therefore, she did not file an affidavit in support of her case. Though the learned counsel representing the respondent is only *amicus curiae*, he filed an affidavit. There is nothing wrong on his part in filing the affidavit and also assisting the Court to pass a just order in the circumstances of the case. Therefore, the affidavit in support of the application by *amicus curiae* cannot be faulted. As far as the counter not being filed along with the subject I.A., the same was due to pendency of Transfer Petition(s)(Civil) No.1346-1347/2015 before the Hon'ble Apex Court. The decision relied upon by the learned counsel for the revision petitioner relates to the role of the Advocate being engaged by the wife i.e., *amicus curiae*. The facts of the said decision are quite different from the facts of the case on hand.

7. Under these circumstances, the Court below is justified in passing the impugned order. There is neither illegality nor perversity in the impugned order. The Court below rightly exercised its jurisdiction in passing the impugned order. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Dr. SHAMEEM AKTHER, J

Date: 06.11.2019
ssp

