

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.7752 of 2018

ORDER:

Heard Sri Shyam S.Agarwal, Counsel for petitioner and Sri A.Satya Prasad, Senior Counsel appearing for respondent.

2. This Revision is filed assailing the order dt.21.12.2018 in I.A.No.1534 of 2018 in F.C.O.P.No.1523 of 2017 on the file of the Judge, Additional Family Court, City Civil Courts, Hyderabad.

3. The said O.P. was filed by the respondent against the petitioner for dissolution of their marriage, which took place on 04.11.2016 alleging cruelty.

4. Petitioner had been set *ex-parte* on 13.10.2018.

5. Petitioner then filed I.A.No.1534 of 2018 to set aside the order dt.13.10.2018 setting her *ex-parte* alleging that she is employed in the State of Texas in the United States of America(USA) and though notice was served on her, she could not get leave and could not come down to India. She stated that she had put in all efforts to come to India and she also booked tickets to come to India on 20.09.2018, but there was a setback to her health by detection of Benign Tumor as per report dt.08.08.2018 and so she could not come down to India. She further stated that she would cooperate with the Court if the order dt.13.10.2018 is set aside and abide by the conditions, if any, the Court may impose.

6. This application was opposed by the respondent. He contended that the application is not maintainable and without filing a GPA on behalf of the petitioner, petition could not have been filed. It is also contended that the medical report, about the petitioner being diagnosed as suffering from Benign Tumor, is not filed. Reference is also made to earlier adjournments where petitioner had not appeared, and it was contended that sufficient time had already been given to the petitioner to contest the case, but she intentionally and deliberately did not appear before the Court below.

7. By order dt.21.12.2018, the Court below dismissed the said I.A. The Court below referred to the earlier events after filing of the E.P., and to the order passed by it on 26.11.2018 wherein it had recorded that the Family Court has to conduct conciliation and without conciliation it cannot move forward. It also referred to its subsequent order dt.03.12.2018 rejecting the GPA filed by the petitioner seeking to be represented by her father, on the ground that the GPA is not validated in India. It also referred to certain medical reports filed by the petitioner, which were disputed by the respondent, and also that there is no mention of Benign Tumor in the said medical reports. It also rejected the contention of the petitioner about the uncertainty of her employment in USA as a ground not to appear before the Court. It referred to an order dt.09.10.2017 in Tr.CMA.No.1278 of 2016 passed by the Supreme Court that conciliation has to be

conducted between the parties physically and held that since the petitioner did not express her willingness to attend the Court on a particular date, if further time is given, her application is liable to be rejected.

8. Assailing the same, this Revision is filed.

9. On 28.03.2018 in I.A.No.3 of 2018 this Court stayed all further proceedings in FCOP.No.1523 of 2017 and I.A.No.1 of 2019 is filed by respondent to vacate the said order.

10. Counsel for the petitioner contended that the petitioner is willing to appear, if given an opportunity to do so, before the Court below, and states that since her VISA had lapsed and there was shutdown of the Government in USA, she could not get it renewed and she would appear in the 1st week of March, if granted time to do so.

11. Though counsel for respondent objected to the grant of further opportunity to the petitioner having regard to the fact that the marital status of the parties is in issue, which has repercussions on their future life, and since petitioner has now assured that she would appear before the Court below if given an opportunity to do so, this Civil Revision Petition is allowed; the order dt.21.12.2018 in I.A.No.1534 of 2018 in F.C.O.P.No.1523 of 2017 is set aside; and the said I.A. is allowed, subject to the petitioner appearing before the Court below at 10.30 a.m., on 07.03.2019, and also subject to the petitioner participating in the

conciliation proceedings on that day or any nearby date which the Court may chose to fix; if not, this Civil Revision Petition shall stand dismissed. Consequently, I.A.No.1 of 2019 is dismissed. No order as to costs.

12. Miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

28th January, 2019.

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