

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI
FAMILY COURT APPEAL Nos.193 AND 194 OF 2011**

COMMON JUDGMENT: (Per Hon'ble Dr.SA,J)

These appeals, under Section 19 of the Family Courts Act, 1984, are filed by the appellant/husband, aggrieved by the common order, dated 29.06.2011, passed in O.P.Nos.384 and 468 of 2007 by the Judge, Additional Family Court, Hyderabad, whereby, O.P.No.384 of 2007 filed by the appellant/husband, under Section 13 (1)(ia)(ib) of the Hindu Marriage Act, 1955, seeking divorce by dissolving the marriage performed between him and the respondent/wife on 21.02.2003, was dismissed and O.P.No.468 of 2007 filed by the respondent/wife, under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights, was allowed.

2. Heard the learned counsel for both sides and perused the record.

3. This Court as well as the learned counsel on record verified the records and docket proceedings of the Court below. In O.P.No.384 of 2007, though the affidavit in lieu of chief

examination of PW.2 was filed, PW.2 was cross-examined by appointing an Advocate Commissioner and the evidence of PW.2 was forming part of the record, the Court below did not take the same into consideration, while disposing of the subject O.Ps. Furthermore, the Court below observed that in O.P.No.384 of 2007, PW.1 was only examined on behalf of the appellant/husband, though there is evidence of PW.2. Non-consideration of the evidence of PW.2 vitiates the orders under challenge and they are liable to be set aside.

4. Accordingly, both the appeals are allowed and the impugned common order, dated 29.06.2011, passed in O.P.Nos.384 and 468 of 2007 by the Judge, Additional Family Court, Hyderabad, is set aside. O.P.Nos.384 and 468 of 2007 are restored to file. The Court below is directed to dispose of O.P.Nos.384 and 468 of 2007 afresh, in accordance with law, after examining the evidence of PW.2 in O.P.No.384 of 2007, apart from other evidence on record, expeditiously, preferably within a period of thirty (30) days from the date of receipt of a copy of this common judgment.

5. Here, it is to be noted that the manner in which the learned Judge has passed the impugned common order is deprecable. The

Presiding Officer, who passed the impugned common order, is directed to be careful in future and not to repeat such mistakes again.

Miscellaneous Petitions, if any, pending in these appeals, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

JUVVADI SRIDEVI, J

Date: 23.06.2022
MD