

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

FAMILY COURT APPEAL No.137 OF 2008

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

This appeal under Section 19(1) of Family Courts Act, 1984, is filed by the appellant/wife challenging the order and decree, dated 16.10.2007 passed in O.P.No.136 of 2005 by the Judge, Family Court, Warangal, whereby the subject OP filed by the appellant/wife under Section 37 of the Indian Divorce Act for refund of Rs.3,00,000/- together with interest @ 24% per annum, was dismissed.

2. Heard the learned counsel for the appellant and perused the record.

3. Learned counsel for the appellant would contend that though there is oral evidence of P.Ws.1 to 4 and documentary evidence under Exs.A1 and A2 to substantiate the payment of dowry of Rs.1,75,000/- and other household articles to the respondent-husband, the Family Court did not appreciate the same in correct perspective and erroneously dismissed the

subject O.P. and ultimately prayed to set aside the impugned order and allow the subject O.P.

4. There is no dispute that there was a marriage between the appellant-wife and the respondent-husband on 11.02.2002. The specific case of the appellant-wife is that an amount of Rs.1,75,000/- was given besides other household articles as dowry to the respondent-husband. The marriage was consummated and both the parties lived happily for some time. Thereafter, the appellant-wife was driven out from the matrimonial home. To substantiate the same, the appellant-wife was examined as P.W.1 and got marked Ex.P1 xerox copy of decree in O.P.No.7 of 2004 and Ex.A2-marriage agreement dated 16.01.2002. The whole case is revolving over Ex.A2-marriage agreement dated 16.01.2002. The Family Court has elaborately examined Ex.A2-marriage agreement dated 16.01.2002. There is oral evidence of P.Ws.1 to 3 to substantiate that Rs.1,75,000/- said to have been paid as dowry to the respondent-husband. On a perusal of Ex.A2-marriage agreement dated 16.01.2002, it does not reflect the signature of the respondent-husband. The Family Court has also elaborately discussed Sections 91 and 92 of

the Evidence Act, with reference to subject matter of O.P., and was of the view that as per Section 92 of the Evidence Act, when an agreement is reduced into writing, no evidence of any oral agreement or statement shall be admitted. It discarded the ocular evidence of P.Ws.1 to 3. Admittedly, the crucial document under which the amount said to have been paid to the respondent-husband, is not signed by the respondent-husband. Admittedly, P.W.4 is not a signatory and he was not present on the date of execution of Ex.A2-marriage agreement. So, Ex.A2-marriage agreement dated 16.01.2002 is not helpful to the appellant-wife to grant the relief as sought for. Further, there are also inconsistencies with regard to the payment of money in the pleadings as well as in the chief-affidavit of P.W.1 to seek the relief of return of amount as well as articles given in the marriage. One has to prove the same on the touchstone of preponderance of probabilities. The appellant-wife failed to establish the same. The Family Court had elaborately dealt with all the contentions raised and negated the same. In view of these circumstances, the contentions raised on behalf of the appellant-wife do not merit consideration.

5. Accordingly, the Family Court Appeal is dismissed.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

JUVVADI SRIDEVI, J

Date: 04.04.2022
ssp