



(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**MONDAY, THE FIRST DAY OF JULY,
TWO THOUSAND AND TWENTY FOUR**

:PRESENT:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

AND

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CMA NO: 430 OF 2024

Between:

Sirlu Nikhitha, W/o. Rasigolla Subbarayudu, D/o. Ganganna, aged about 28 years. House Wife, now residing at D.No.1/2517, A P H B Colony, Near Rajiv Park, Yerramukkapalli Post, Kadapa City, Kadapa District

...Appellant/Petitioner in IA/Respondent in FCOP

AND

Rasigolla Subbarayudu, S/o. R.C.Subbarayudu, Aged about 33 years, R/o. D.No.4/363-1, G.V. Satram Village, Nandyalampeta Post, Mydukur Mandal, Kadapa District.

...Respondent/Respondent in IA/Petitioner in FCOP

WHEREAS the Appellant above named through her Advocate Sri SHRAVAN.WVB presented this Petition under Order 43, rule 1 of CPC is filed praying that in the circumstances stated in the affidavit filed in support of the Civil Miscellaneous Appeal, the High Court may be pleased to allow the CMA by setting aside the impugned Order, dt. 1.5.2024 passed in I.A.No.43/2024 in F.C.O.P.No.157/2023 on the file of the Court of the Judge Family Court-cum-VI Additional District and Sessions Judge, Kadapa;

AND WHEREAS the High Court upon perusing the petition and memorandum of grounds filed herein and upon hearing the arguments of Sri Shravan.WVB, Advocate for the Petitioner, directed issue of notice to the sole Respondent herein to show cause as to why this CIVIL MISCELLANEOUS APPEAL should not be admitted.

You viz:

Rasigolla Subbarayudu, S/o. R.C.Subbarayudu, R/o. D.No.4/363-1, G.V.

Satram Village, Nandyalampeta Post, Mydukur Mandal, Kadapa District.

are be and hereby directed to show cause either appearing in person or through an Advocate, as to why in the circumstances set out in the petition and the grounds filed therewith (copy enclosed) this CMA should not be admitted on or before 29.07.2024, on which date the case stands posted for hearing;

IA NO: 1 OF 2024:

Petition under Section 151 CPC is filed praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to set-aside the Decree and Order, dt.1.5.2024 passed in I.A.No.43/2024 in F.C.O.P.No.157/2023 on the file of the Court of the Judge Family Court-cum-VI Additional District and Sessions Judge, Kadapa, pending disposal of CMA No.430 of 2024, on the file of the High Court.

The Court made the following:

ORDER:

“Heard learned counsel for the appellant.

2. This appeal is filed by the wife challenging the order dated 01.05.2024 passed by the Judge, Family Court – cum – VI Additional District and Sessions Judge, Kadapa, whereby, the appellant’s application to set aside the exparte decree under Order 9 Rule 13 of CPC has been rejected.

3. Learned counsel for the appellant submits that on 02.02.2024, the appellant appeared before the Court and on that date, she came to know that an order to proceed exparte was passed on 18.12.2023. He further submits that on 02.02.2024, the respondent led evidence and the matter was posted to 05.02.2024. On 05.02.2024 also the appellant was present and filed a petition seeking permission to engage counsel along with separate petition to set aside the exparte order but the same was returned by the Court though the counsel for

husband endorsed 'reported no counter', and on the same date the divorce decree was passed exparte. The appellant's application to set aside the exparte decree has also been rejected by the order dated 01.05.2024. He further submits that even in the presence of order to proceed exparte dated 18.12.2023, the appellant had the right to lead evidence and also to cross examine the witness.

4. Learned counsel for the appellant submits that the manner in which the ex-parte divorce decree, affecting the status of the appellant, has been passed is contrary to the settled principles of law. The Court should endeavour to decide the case on merits with opportunity of hearing to both the parties. He further submits that the cause as shown in the application supported with the affidavit for setting aside the exparte order was that the respondent son was unwell for which she had to rush the hospital and consequently, she could not appear on 18.12.2023. But the said cause has not been accepted observing that medical certificate was not filed, which is hyper technical approach.

5. The matter requires consideration.

6. Issue notice to the respondent.

7. In addition to the normal mode of service, the appellant is permitted to take out personal notice to the respondent by registered post and acknowledgment due and file proof of service in the Registry before the next date of listing.

8. Post on 29.07.2024.

9. Till the next date of listing, the operation of exparte decree shall remain stayed.

10. Considering the submissions as advanced and perusal of the record, we call for the report from the Judge, Family Court – cum – VI Additional District and Sessions Judge, Kadapa, on the following points:

i) if the appellant was granted opportunity of cross examination of the witness produced by the husband and of leading evidence and

ii) the complete docket order proceedings.

11. Let the report be submitted before the next date of listing in sealed cover.

12. Office shall sent the copy of this order to the Court of the Judge, Family Court – cum – VI Additional District and Sessions Judge, Kadapa.”

//TRUE COPY//

SD/- S.SRINIVASA PRASAD
ASSISTANT REGISTRAR


SECTION OFFICER

For

To,

1. The Registrar (Judicial), High Court of AP, Amaravati
2. The Judge Family Court-cum-VI Additional District and Sessions Judge, Kadapa
3. Rasigolla Subbarayudu, S/o. R.C.Subbarayudu, R/o. D.No.4/363-1, G.V. Satram Village, Nandyalampeta Post, Mydukur Mandal, Kadapa District. (by RPAD- along with a copy of petition and memorandum of grounds)
4. One CC to Sri. Shravan.WVB, Advocate [OPUC]
5. The Section Officer, CMA Section, High Court of AP
6. Two spare copies

MM

HIGH COURT

RNT,J

&

VN,J

DATED:01/07/2024

NOTE: POST ON 29.07.2024

NOTICE BEFORE ADMISSION

CMA.No.430 of 2024

DIRECTION

