

[3443]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY SECOND DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

CIVIL REVISION PETITION Nos: 2886,2940 and 2941 OF 2019

CIVIL REVISION PETITION NO: 2886 OF 2019

Civil Revision filed under Article 227 of the Constitution of India, aggrieved by the order dated 21.11.2019 passed in I.A 1745 of 2019 in F.C.O.P. No. 1774 of 2015 on the file of the court of the XV Addl. District Judge-Cum-XV Metropolitan Sessions Judge Cum-II Addl Family Judge, Kukatpally at Miyapur, Ranga Reddy District.

Between:

Allu. Srinivasa Rao, S/O Krishna Murthy, Aged about 46 Yrs, Occ- Software Engineer, R/O H. No. 16-31-ixp-59 and 60, KPHB Colony, Kukatpally, Ranga Reddy District.

...Petitioner

AND

Smt. Jaya Madhavi, D/O Tata Rao, Aged about 40 Yrs, Occ- Accountant, R/O 69, Pond Street, Sharon MA 02067, USA Rep. by her Special Power of Attorney holder, Ganta Tata Rao, S/o. Appala Swami, Age:71 years, Occ: Retired Employee, R/o. H. No. 6-36, Vijaywada Road, Vijaya Diary Opposite Road, Hanuman Junction, Bapulapdu, Krishana District.

...Respondent

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order, dated: 21.11.2019 passed in I.A 1745 of 2019 in F.C.O.P. No. 1774 of 2015 the XV Addl. District Judge-Cum-XV Metropolitan Sessions by Judge-Cum-II Addl Family Judge, Kukatpally.

Counsel for the Petitioner : Sri. D V Rao

Counsel for the Respondent : Sri M Phani Kumar (Not Present)

CIVIL REVISION PETITION NO: 2940 OF 2019

Civil Revision filed under Article 227 of the Constitution of India, aggrieved by the order dated 21.11.2019 passed in I.A 1744 of 2019 in F.C.O.P. No. 427 of 2017 on the file of the court of the XV Addl. District Judge-Cum-XV Metropolitan Sessions Judge Cum-II Addl Family Judge, Kukatpally at Miyapur, Ranga Reddy District.

Between:

Allu. Srinivasa Rao, S/O Krishna Murthy, Aged about 40 Yrs, Occ- Software Engineer, R/O H. No. 16-31-ixp-59 and 60, KPHB Colony, Kukatpally, Ranga Reddy District.

...Petitioner

AND

Smt. Jaya Madhavi, D/O Tata Rao, Aged about 40 Yrs, Occ: Accountant, R/O 69, Pond Street, Sharon MA 02067, USA Rep. by her Special Power of Attorney holder, Ganta Tata Rao, S/o. Appala Swami, Age 71 years, Occ: Retired Employee, R/o. H. No. 6-36, Vijaywada Road, Vijaya Diary Opposite Road, Hanuman Junction, Bapulapdu, Krishana District.

...Respondent

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order, dated. 21.11.2019 passed in I.A 1744 of 2019, in F.C.O.P. No. 427 of 2017 the XV Addl. District Judge-Cum-XV Metropolitan Sessions by Judge-Cum-II Addl Family Judge, Kukatpally

Counsel for the Petitioner : Sri. D V Rao

Counsel for the Respondent : Sri M Phani Kumar (Not Present)

CIVIL REVISION PETITION NO: 2941 OF 2019

Civil Revision filed under Article 227 of the Constitution of India, aggrieved by the order dated 21.11.2019 passed in I.A 1746 of 2019 in F.C.O.P. No. 1774 of 2015 on the file of the court of the XV Addl. District Judge-Cum-XV Metropolitan Sessions Judge Cum-II Addl Family Judge, Kukatpally at Miyapur, Ranga Reddy District.

Between:

Allu. Srinivasa Rao, S/O Krishna Murthy, Aged about 46 Yrs, Occ- Software Engineer, R/O H. No. 16-31-ixp-59 and 60, KPHB Colony, Kukatpally, Ranga Reddy District.

...Petitioner

AND

Smt. Jaya Madhavi, D/O Tata Rao, Aged about 40 Yrs, Occ- Accountant, R/O 69, Pond Street, Sharon MA 02067, USA Rep. by her Special Power of Attorney holder, Ganta Tata Rao, S/o. Appala Swami, Age:71 years, Occ: Retired Employee, R/o. H. No. 6-36, Vijaywada Road, Vijaya Diary Opposite Road, Hanuman Junction, Bapulapdu, Krishana District.

...Respondent

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order, dated. 21.11.2019 passed in I.A 1746 of 2019 in F.C.O.P. No. 1774 of 2015 by the XV Addl. District Judge-Cum-XV Metropolitan Sessions Judge-Cum-II Addl Family Judge, Kukatpally.

Counsel for the Petitioner : Sri. D V Rao

Counsel for the Respondent : Sri M Phani Kumar (Not Present)

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE NARSING RAO MANDIKONDA**CIVIL REVISION PETITION NOS.2886, 2940 AND 2941 OF 2019****COMMON ORDER:**

Since the parties and the issue involved in these three Civil Revision Petitions are common, they are being heard together and disposed of by way of this common order.

2. These three Civil Revision Petitions are filed under Article 227 of the Constitution of India aggrieved by the docket orders, dated 21.11.2019, in I.A.No.1745 of 2019 in F.C.O.P.No.1774 of 2015; I.A.No.1744 of 2019 in F.C.O.P.No.427 of 2017 and I.A.No.1746 of 2019 in F.C.O.P.No.1774 of 2015 passed by the learned XV Additional District Judge-cum-XV Metropolitan Sessions Judge-cum-II Additional Family Judge, Kukatpally, Miyapur Ranga Reddy District.

3. I.A.No.1745 of 2019 was filed under Order IX Rule VII of C.P.C to set aside the *ex parte* order, dated 10.07.2019 passed in F.C.O.P.No.1774 of 2015; I.A.No.1744 of 2019 is filed under Section 151 of C.P.C. to re-open the evidence of respondent-petitioner in F.C.O.P.No.427 of 2017 and I.A.No.1746 of 2019 was filed under Section 151 of C.P.C. to

re-open the evidence of respondent-petitioner in F.C.O.P.No.1774 of 2015 to enable the petitioner-respondent to cross-examine P.W.1 were allowed on payment of costs of Rs.200/- to P.W.1. Aggrieved by the said orders, these three Civil Revision Petitions were filed by the petitioner/respondent/defendant.

4. The brief facts of the case for disposal of these revision cases are as under.

Petitioner herein is husband of the respondent. Petitioner herein filed F.C.O.P.No.1774 of 2015 under Section 13 (1)(ia)&(ib) of the Hindu Marriage Act, 1955 (for short, 'the Act, 1955') for dissolution of marriage between himself and the respondent solemnized on 30.05.1996 and also to cancel the Marriage Certificate bearing No.4 of 1997, dated 16.08.1997, on the file of Registrar of Marriages, Kanumolu, Krishna District, Andhra Pradesh due to disputes between them. It is stated that in view of disputes, the respondent herein approached learned Judge, Family Court of Commonwealth of Masschuetts, United States of America and obtained absolute divorce decree, dated 07.11.2016 and the same is inforce.

5. F.C.O.P.No.1774 of 2015 is filed by the petitioner herein and it is coming up on 10.07.2019 for his evidence. On that day, the petitioner was examined as P.W 1 and he also filed his chief-examination affidavit. As there was no representation on behalf of the respondent, the respondent was set *ex-parte* and matter was posted for orders on 26.07.2019. It is stated that the counsel representing the respondent herein is pursuing the matter from time to time and on 07.07.2019 the counsel went to Tirumala for Dharshan of Lord Venkateswara Swamy and returned on 10.07.2019. Therefore, he could not attend the Court on 10.07.2019 and represent the matter. It is stated that his absence is neither willful nor wanton due to above said reason, he could not attend the Court on that day. It is further stated that the Special General Power of Attorney holder is an old aged person and suffering with multiple health problems and he is residing at Hanuman Junction, Krishna District, as such he is unable to attend the Court on 10.07.2019. Therefore, the respondent filed aforesaid Interlocutory Applications to set aside the *ex parte* order, dated 10.07.2019, to re-open her evidence and to recall P.W.1

for the purpose of cross-examination, otherwise, the respondent will be put to irreparable loss.

6. Petitioner herein filed counter-affidavit in the said applications denying the averments made in the petitions and stated that the respondent has not filed any documentary proof in support of her contention that the counsel representing her went to Tirumala on 07.09.2019 for Dharshan of Lord Venkateswara Swamy and returned only on 10.07.2019. It is stated that the respondent has engaged three Advocates on her behalf to represent present case, but no one represent the matter on that day, which shows the intention of the respondent to drag on the matter without proceeding further. It is stated that GPA holder is aged about 75 years and suffering from health problems and he has been residing at Hanuman Junction, Krishna District. But, no document is filed in support of her contention. It is further stated that the trial Court had rightly set her *ex parte* for her non-appearance and there are no grounds to interfere with the impugned docket orders and hence he prayed to dismiss the petitions.

7. Heard **Dr.D.V.Rao**, learned counsel for the petitioner. None appeared for the respondent.

8. Admittedly, it is a matrimonial dispute among the parties. The respondent is residing in United States of America and she is represented by her father as General Power of Attorney Holder.

9. The main contention of the revision petitioner before this Court is that the learned II Additional Family Judge, Kukatpally, Ranga Reddy District, while allowing the petitions, did not consider the fact that the respondent herein was regularly absent for hearings and she did not participate in daily proceedings. He also contended that initially the learned Judge rightly closed the evidence of the respondent by setting her *ex parte*. But, subsequently the learned Judge ought not to have re-open the case and recall P.W.1 for facing the cross-examination. In support of his contentions and supporting the orders passed by the learned Trial Court, he also relied on the judgment of the Hon'ble Supreme Court in **B.V.Smitha Rani v. M.K.Girish**¹ and contended that the

¹ Civil Appeal No.4558 of 2008

order passed by the learned Judge in respect of setting the respondent *ex parte* and closing cross-examination of P.W.1 initially; Whereas the judgment relied upon by the petitioner before this Court is distinguishable for the reason that the facts on hand and facts in **B.V.Smitha's** case are different for the reason that in the said judgment the Judge, Family Court fixed the case on three different dates for cross-examination of the appellant, but the respondent did not avail that opportunity, wherein the Family Court had rightly closed the evidence of the respondent therein. In the present case, the order, dated 10.07.2019 clearly shows that the respondent was not provided any opportunity to cross-examine P.W.1 and that as held by this Court in the earlier paras the order passed by the learned Additional Family Judge appears to be an hasty order as on the same date the chief-examination affidavit was received and on the same day respondent was set *ex parte* and right to cross examination was closed and proceeded for pronouncement of the orders on the next date, as such the judgment which is cited by the learned counsel for the petitioner, does not come to his rescue nor it can be applied in the present set of facts.

10. As seen from the record on 10.07.2019, the matter was posted for trial and on the same day, the petitioner was examined as P.W.1 and he filed his chief-examination affidavit. As the Court found that there was no representation on behalf of respondent, she was set *ex parte* and directed to list the matter for order on 26.07.2019 directly. The very passing of the order, dated 10.07.2019 by the learned II Additional District Judge, Kukatpally, taking the chief-affidavit on the same day and closing the examination of the respondent on the same day appears to be an hasty decision taken by him. However, on an application filed by the respondent herein, the learned Family Court Judge has rightly set aside the *ex parte* order so as to give a fair chance to the respondent to put up her case by cross examining the PW.1 which right cannot be denied. The very passing of the order by the learned Additional Family Judge on the same day appears to be an erroneous order and setting aside the said order subsequently on filing of the present I.As. cannot be found fault for the two reasons that the very order itself is being an erroneous order as it is an hasty order passed without giving an opportunity to the respondent. The other

ground raised is questioning the order, dated 21.11.2019 passed in the said I.As., the respondent was continuously absent, as such the learned Judge ought not to have given a chance to her. That ground also appears to be not correct for the reason that no opportunity was given to the respondent to cross-examine P.W.1.

11. On the other ground which was raised by the respondent is that whether an Advocate is the competent person to file an affidavit on behalf of the respondent. Admittedly, the respondent is not staying in the Country and she is staying at United States of America and she is represented by General Power of Attorney holder who is said to be aged about 75 years and law is clear that any person who is acquainted with the facts of the case and the proceedings can file the affidavit before the Court bringing to notice of the Court as to the reasons for non-appearance of the Advocate on the said date and also by the General Power of Attorney appears to be a genuine reason. There is no bar or prohibition to file an affidavit by the counsel on record who is acquaintance with the proceedings who was holding vakalatnama on behalf of the petitioner. The Hon'ble Apex

Court had an occasion to consider the legal question in **Ananta Pandu Porobo Desai and others v. Lalita Poi**², in which it is held as follows:

“Mr Vineet Kumar who appears on behalf of the respondent has not been able to contest the position that the very same advocate who appeared in the suit on behalf of the plaintiff could file an application for restoration of the suit on the authority of the original vakalatnama executed by the plaintiff in his favour.”

12. Hence, considering the above decision of the Hon'ble Supreme Court and also considering fact that the respondent's right to cross-examine P.W.1 being a genuine reason, as such this Court is of the opinion that the grounds which are raised by learned counsel for the revision petitioner herein does not hold good and the same are to be rejected.

13. The trial Court has rightly allowed the petitions filed by the respondent by giving fair opportunity to parties to put their case and this Court do not see any reason to interfere with the orders passed by the learned II Additional Judge Family Court, Kukatpally. Hence, his point is

² (1978) 2 Supreme Court Cases 681 (1)

answered in favour of the respondent and against the revision petitioner.

14. In the result, all three revision petitions are dismissed confirming the docket orders, dated 21.11.2019, in I.A.No.1745 of 2019 in F.C.O.P.No.1774 of 20115; I.A.No.1744 of 2019 in F.C.O.P.No.427 of 2017 and I.A.No.1746 of 2019 in F.C.O.P.No.1774 of 2015 passed by the learned XV Additional District Judge-cum-XV Metropolitan Sessions Judge-cum-II Additional Family Judge, Kukatpally, Miyapur, Ranga Reddy District. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SD/- B.REKHA RANI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice Narsing Rao Nandikonda
(For His Lordship kind Perusal)

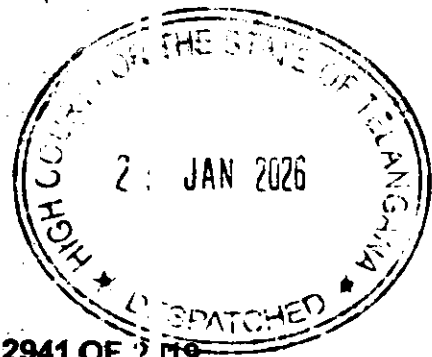
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5. One CC to Sri. D V Rao, Advocate [OPUC]
6. One CC to Sri M Phani Kumar, Advocate [OPUC]
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DL/PSL

HIGH COURT

DATED: 22/08/2025



COMMON ORDER

CIVIL REVISION PETITION Nos: 2886, 2940 and 2941 OF 2019

DISMISSING THE CRPs

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