

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7325 OF 2013
(Arising out of SLP(C) No. 32038 of 2009)

|Payyalamitta Arunasree |.. Appellant(s) |

Versus

|Payyalamitta Seetharamanjaneya Venkata Siva |.. Respondent(s) |
|Stayanarayana Rao |

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of judicature at Andhra Pradesh at Hyderabad in C.M.A. No. 4735 of 2004 dated 01.07.2009.

3. The appellant is the wife of the respondent-herein.

4. The respondent had filed a divorce petition under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 for dissolution of the marriage.

5. The Trial Court had passed a decree of dissolution of the marriage. Immediately thereafter the appellant-wife had filed C.M.A. No. 4735 of 2004 before the High Court. Since the counsel for the appellant was not present before the High Court when the case was called for hearing, the Court vide orders dated 08.12.2008 had dismissed the appeal for non-prosecution.

6. Thereafter, the appellant had filed an application for restoration of the appeal inter alia contending various grounds. The High Court after considering the grounds restored the appeal to its original number. It appears that immediately after dismissal of the appeal for non-prosecution on 08.12.2008 by the High Court the respondent-husband got married for the second time on 22.12.2008.

7. After taking into consideration the subsequent event that the respondent has married for the second time, the High Court vide orders dated 01.07.2009 has dismissed the appeal filed by the appellant-herein. Aggrieved by the said order of the High Court the appellant is before us in this appeal by way of special leave.

8. Heard learned counsel for the parties to the lis.

9. In our opinion, the High Court ought to have considered the appeal on its own merits without observing that since the husband had got married for the second time, nothing survives in the appeal. In fact the learned Counsel for the appellant has taken us through various contentions including the one that the respondent-herein without waiting for at least thirty days from the date of the dismissal of the appeal on default could

not have married for the second time. Learned Counsel also raised several contentions in support of the appeal.

10. Since the order passed by the High Court was only on the ground that the respondent has got married for the second time, we are of the opinion that judgment and order passed by the High Court cannot be sustained.

11. In view of the above, we allow this appeal, set aside the judgment and order passed by the High Court in C.M.A. No. 4735 of 2004. We remand the matter back to the High Court for re-consideration of the appeal on merits, without being influenced from the fact that the respondent has married for the second time on 22.12.2008.

12. The Civil Appeal is disposed of accordingly.

Ordered accordingly.

.....J.
[H. L. DATTU]

.....J.
[M. Y. EQBAL]

NEW DELHI,
AUGUST 30, 2013.

ITEM NO. 204

COURT NO.4

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).32038/2009

(From the judgement and order dated 01/07/2009 in CMA No.4735/2004 of
The HIGH COURT OF A.P AT HYDERABAD)

PAYYALAMITTA ARUNSREE

Petitioner(s)

VERSUS

PAYYALAMITTA S.V.S.SATYANARAYANA RAO

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)
(FOR FINAL DISPOSAL)

Date: 30/08/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE M.Y. EQBAL

For Petitioner(s) Ms. D. Geetha, Adv.
Mr. A Ramesh, Adv.
Ms. G.Madhavi, Adv.

For Respondent(s) Mr. Manoj Saxena, Adv.
Dr. Kailash Chand, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The Civil Appeal is allowed in terms of the signed order.

| [Charanjeet Kaur] | | [Vinod Kulvi] |
| Court Master | | Asstt. Registrar | |

[Signed order is placed on the file]