

V. Bhagyalaxmi Vs V. Rahul Kumar

Court: Andhra Pradesh High Court

Date of Decision: Nov. 20, 2007

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 6 Rule 17

Constitution of India, 1950 â€” Article 227

Divorce Act, 1869 â€” Section 10

Hindu Marriage Act, 1955 â€” Section 13(1)

Citation: (2008) 2 ALD 36 : (2008) 3 ALT 32 : (2009) 1 CivCC 510

Hon'ble Judges: Gopala Krishna Tamada, J

Bench: Single Bench

Advocate: Jonna Ramani, for the Appellant; M. Rama Krishna, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Gopala Krishna Tamada, J.

This civil revision petition is directed against the order, dated 20.2.2007 made in IA No. 91 of 2006 in O.P.

No. 89 of 2005 on the file of the Family Court, Warangal, whereby, the learned Judge allowed the application filed under Order 6 Rule 17 C.P.C.

amending the provision of law as Section 13(1)(ia)(ib) of the Hindu Marriage Act instead of Section 10(x) of the Indian Divorce Act.

2. The brief facts of the case are that the husband i.e., the respondent herein instituted O.P. No. 89 of 2005 seeking divorce u/s 10(x) of the

Divorce Act, 1869 stating that his wife i.e., the petitioner herein treated him with such cruelty as to cause a reasonable apprehension in his mind

that it would be harmful or injurious for him to live with her. Before the trial commenced, the respondent-husband filed the present application

seeking amendment of the provision of law as Section 13(1)(ia)(ib) of the Hindu Marriage Act instead of Section 10(x) of the Indian Divorce Act.

As stated above, the trial Court allowed the application by amending the provision as sought for. Aggrieved by the order dated 20.2.2007, the

petitioner-wife has filed this civil revision petition.

3. Heard the learned Counsel for both the parties and perused the material placed on record.

3.1 In my considered view, the trial Court grossly erred in entertaining the O.P. itself when the parties to the proceedings are Hindus. In fact, in the

preamble to the Divorce Act, it is made clear that the enactment of the Divorce Act is meant for those persons professing the Christian religion.

Therefore, it is not known as to how the original petition filed by the respondent-husband seeking divorce under the Divorce Act is maintainable. In

fact, the trial Court should have rejected the O.P. at the threshold. After coming to know of the mistake that has crept in, the respondent-husband

filed the present application seeking amendment of the provision, which, in my considered view, is not permissible under law. The provisions under

which a divorce can be sought under the Divorce Act are entirely different from the provisions under which a divorce can be sought under the

Hindu Marriage Act. No doubt, the original petition for divorce is maintainable at any stage during the subsistence of the marriage between the

spouses, but it is not known what prevented the respondent-husband in withdrawing the said O.P. filed under the Divorce Act and filing a separate

O.P. under the provisions of the Hindu Marriage Act. The only contention put forth by the learned Counsel for the respondent-husband is that

there is some progress in the O.P. filed by the respondent-husband and some witnesses have already been examined. This cannot be a mere

ground to say that the O.P. filed by him under Divorce Act can be converted into an O.P. under the Hindu Marriage Act. Hence, the impugned

order is liable to be set aside.

4. In the result, this civil revision petition filed under Article 227 of the Constitution of India is allowed and the order dated 20.2.2007 made in IA

No. 91 of 2006 in O.P. No. 89 of 2005 is hereby set aside. Consequently, in the light of the observations made by this Court that only Christians

can maintain a petition for divorce under the Divorce Act, the O.P. filed by the respondent-husband is hereby dismissed. If the respondent-

husband so chooses and is advised, he can file a separate O.P. under the provisions of the Hindu Marriage Act. No costs.