

(1990) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2277 of 1990

Bellamkonda Venkatrayudu

APPELLANT

Vs

Bellamkonda Mahalakshamma

RESPONDENT

Date of Decision : 07-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 9, 115
Hindu Marriage Act, 1955 — Section 21, 24, 28

Citation : (1991) 1 ALT 84 : (1991) 1 APLJ 361

Hon'ble Judges : M. Jagannadha Rao, J

Bench : Single Bench

Advocate : P.V.R. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, J.—This Revision is preferred against an order of the (earned Additional Subordinate Judge, Narasaraopet, allowing I.A. No. 2064 of 1985 filed by the respondent (who is the wife of the petitioner). That was an application filed under Order 9 Rule 9 CPC for the setting aside of an earlier order dated 24-6-1985 made in I.A.No. 3294 of 1984. The said I.A.No. 3294 of 1984 was an application filed by the respondent-wife for setting aside the ex parte decree of divorce dated 8-8-1984. In the present application filed for restoring the earlier I.A.No. 3294 of 1984, the respondent examined herself and in her evidence she referred to the fact that she was under the treatment of Dr. Jagannadha Rao. On the basis of the said evidence, the petition, I.A. No. 2064 of 1985, was allowed and the earlier interlocutory application was restored. In the Lower Court, the petitioner relied upon the decision of the Gauhati High Court reported in Anjana Kumar v. Minakshi, AIR 1985 Gauhati 44 to the effect that the provisions of Order IX Rule 13 CPC are not applicable to the proceedings under the Hindu Marriage Act, 1955. The learned Subordinate Judge did not choose to follow the above said decision in view of the decision of the Delhi High Court reported in Rishi Dev Anand Vs. Devinder Kaur, . The learned Subordinate Judge also

referred to the decision of this Court in D.K. Ratnamma Vs. Konluri John, .

2. In this Revision it is contended by the learned counsel for the petitioner that the view taken by the Gauhati High Court in Anjana Kumar's case (1 supra) is correct. Section 21 of the Hindu Marriage Act states that subject to the other provisions contained in the Act and to such Rules as the High Court may make in this behalf, all proceedings under the Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

3. Rules have been framed by the High Court of Andhra Pradesh (See page 163, second part of the Handbook of CPC by Shri C. Obulapathi Choudary, 1970 edition). Rule 15 merely mentions the procedure for settlement of issues, the parties to enter appearance and filing written statements. There is no provision in the Rules which in any manner detracts from the provisions of Order IX Rule 13.

4. Thus, it is clear that there is neither any provision in the Act nor in the Rules which precludes the application of Order IX Rule 13 to proceedings under the Hindu Marriage Act.

5. However, the point raised is that the words "subject to the provisions contained in this Act and to such Rules as the High Court may make in this behalf" exclude the provisions of Order IX Rule 13 in view of the provision for an appeal prescribed u/s 28 of the Hindu Marriage Act.

6. Section 28 of the Hindu Marriage Act reads as follows :-

"Appeals from Decrees and Orders :-

(1) All Decrees made by the Court in any proceeding under this Act shall, subject to the provisions of Sub-section (3), be appealable as decrees of the Court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original Civil Jurisdiction.

(2) Orders made by the Court of any proceeding under this Act u/s 25 or Section 26 shall subject to the provisions of Sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this Section on the subject of costs only.

(4) Every appeal under this Section shall be preferred within a period of thirty days from the date of the decree or order."

7. I am unable to accept the view of the Gauhati High Court and the contention that the provision for appeal would necessarily exclude the remedy under Order IX Rule 13 CPC. Such a contention cannot be accepted inasmuch as even the CPC contains provisions for appeals as well as provisions for restoration under

Order IX Rule 13. On the other hand, I am in agreement with the view taken by the Delhi High Court in Rishi Dev Anand's case (2 supra). The learned Judge, there, held that under the Act no provision has been made for setting aside the ex parte decree. Therefore, necessarily, recourse has to be taken to the provisions of the CPC for this purpose. If a spouse has to make an application after an ex parte decree is passed under the Act, provisions of Order IX Rule 13 are attracted in view of Section 21 of the Act. It was held that such a proceeding under the CPC for setting aside the ex parte decree is a proceeding under the Act and that during the pendency of such proceedings the application u/s 24 is maintainable.

8. For the aforesaid reasons, I dissent from the view taken by the Gauhati High Court in Anjana Kumar's case (1 supra) and agree with the view taken by the Delhi High Court in Rishi Dev Anand's case (2 supra). So far as the decision of this Court in Ratnamma's case (3 supra) cited by the Lower Court is concerned, it is not directly in point.

9. For the aforesaid reasons, the Civil Revision Petition is dismissed.