
(2013) 04 AP CK 0039

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 6034 of 2010

Smt. Rachokonda Parvathi

APPELLANT

Vs

Rachakonda Venkata Subrahmanyam

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Criminal Procedure Code, 1973 (CrPC) — Section 124
Penal Code, 1860 (IPC) — Section 498A

Citation : AIR 2013 AP 191 : (2013) 4 ALD 3 : (2013) 4 ALT 589 : (2013) 2 DMC 228

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Ravi Cheemalapati, for the Appellant; G. Rama Gopal, for the Respondent

Judgement

L. Narasimha Reddy, J.—Petitioner is the wife of the respondent. Their marriage took place on 30-10-1996 at Visakhapatnam. The respondent filed O.P. No. 123 of 2000 in the Family Court, Visakhapatnam for divorce. The O.P. was decreed ex parte on 09-06-2000. She filed an application under Order - IX Rule 13 CPC with a prayer to set aside the ex parte decree. Since there was delay of 153 days in filing it, she filed I.A. No. 480 of 2006. In the affidavit filed in support of the I.A, she stated that her parents are from the State of Chattisgarh and when she joined the respondent after marriage at Visakhapatnam, she was subjected to harassment through demand of additional dowry. Reference was made to Crime No. 193 of 1998 filed u/s 498-A IPC in the Mahila Police Station, Raipur, Chhattisgarh and MJC No. 539 of 2001 in the Family Court, Raipur, filed for maintenance. According to the petitioner, the respondent appeared before the Family Court, Raipur on 04-10-2005 and at that time he stated about the ex parte decree obtained by him. The petitioner stated that she was not served with the notice in OP. filed by the respondent and that since she came to know about the decree, she filed the applications. The I.A. was opposed by the respondent.

The trial Court dismissed the I.A. through order, dated 06-11-2007. Hence, this revision.

2. Heard Sri Ravi Cheemalapati, learned counsel for the petitioner and Sri G. Ram Gopal, learned counsel for the respondent.

3. While the petitioner hails from the State of Chattisgarh, the respondent is from the State of Andhra Pradesh. They got married in the year 1996 at Visakhapatnam. Shortly, thereafter, disputes have arisen between them and the petitioner had to go back to the house of her parents at Raipur. Cases under Sections 498-A IPC and 124 Cr.P.C., were filed in the Courts in that State. Almost at the same point of time, the respondent filed O.P. No. 123 of 2000 in the Family Court at Visakhapatnam. The petitioner came to know about the ex parte decree passed in the O.P., filed by the respondent only when he appeared before the Court in the year 2005, and stated about it.

4. The delay of 153 days, in filing an application by a woman spouse to set aside the ex parte decree passed against her, deserves to be condoned by any standard, particularly, when she pleaded that she did not receive notice in the O.P. and when she is residing in another State. The only reason that weighed with the trial Court in refusing to condone the delay was that the respondent had married another woman. That hardly constitutes any basis to defeat the rights of the petitioner. The very fact that the proceedings are pending in the Courts at Raipur and Visakhapatnam, discloses that the relationship was not cordial and the acts resorted to by the respondent in obtaining the ex parte decree and then immediately contacting second marriage can not at all be countenanced, much less the Court can put a seal of approval upon it. Though the status of the second marriage contacted by the respondent may be at a stake, it cannot outwit the gross injustice done to the petitioner.

5. Reliance is placed upon the judgment of the Rajasthan High Court in Surendra Kumar v. Kiran Devi AIR 1997 Rajasthan 63. It is difficult to treat that as a precedent for the proposition that whenever one of the spouses contracts second marriage, after obtaining a decree for divorce, the decree cannot be set aside thereafter. Further, in the instant case, the trial Court did not record any finding to the effect that the notice in the O.P. was served upon the petitioner.

6. Hence, the Civil Revision Petition is allowed and the delay of 153 days in filing the application to set aside the ex parte decree is condoned. Since the reasons that weigh with the Court for condonation of delay would hold good for setting aside the ex parte decree, the I.A. filed under Order - XXXIX Rule - 13 CPC was allowed. As a result, the ex parte decree, dated 09-06-2000, in O.P. No. 123 of 2000 in the Family Court, Visakhapatnam, is set aside. The trial Court shall decide the matter on merits, after giving opportunity to both the parties. There shall be no order as to costs. The miscellaneous petitions filed in this revision shall also stand disposed of.