

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.261 OF 2015

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JUDGMENT: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Civil Miscellaneous Appeal is preferred under Section 28 of the Hindu Marriage Act 1955, aggrieved of the order and decree, dated 24-09-2013, passed by the learned Senior Civil Judge, Wanaparthy, in H.M.O.P. No.111 of 2012.

2. The respondent herein, who is husband of the appellant, filed the above H.M.O.P. No.111 of 2012, under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights. It is stated that the appellant filed her counter opposing the relief sought for by the respondent. The H.M.O.P. was allowed only on the ground that the chief-affidavit filed by the respondent is unchallenged. When the appellant is opposing the relief sought for by the respondent by filing counter affidavit, the Court below ought to have considered the same. But, it appears that, without looking into the counter filed by the appellant, the order impugned was passed allowing the H.M.O.P. filed by the respondent.

3. In that view of the matter, this Court is of the considered view that it is a fit case for re-consideration by the Court below.

4. Therefore, the order impugned is set aside and the matter is remitted to the Court below for fresh disposal in accordance with law

and pass appropriate orders as early as possible, preferably, within a period of four (4) months from the date of receipt of a copy of this order.

5. With the directions as above, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

6 . As a sequel thereto, Miscellaneous applications, if any, pending in the appeal stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

July 30, 2015.

NOTE:

Mark a copy of this order to the Court concerned.

(BO)

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