

**HON'BLE SRI JUSTICE R. SUBHASH REDDY  
AND  
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**FAMILY COURT APPEAL No. 155 of 2015**

**JUDGMENT:** *(Per Hon'ble Sri Justice A. Shankar Narayana)*

Petitioner in O.P. No.233 of 2014 on the file of the Family Court-cum-IV Additional District Judge, Vijayawada (for brevity, 'court below'), is the present appellant.

2. Aggrieved by the order dated 21.01.2015, whereby and whereunder, the court below refused the request made by the appellant (petitioner-husband) for dissolution of marriage between himself and respondent herein (respondent-wife) by granting decree of divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for brevity, 'the Act') by dismissing the O.P., the instant Family Court Appeal is preferred.

3. In the grounds, the appellant states that the court below, somehow, failed to appreciate the fact that he is a resident of Sandigo, California, United States of America, working as Senior Engineer in Electronics in Qualcomm, United States of America and the matter was adjourned to 12.04.2015 from 06.01.2015 for appearance of the parties for reconciliation and, somehow, the date of adjournment was changed as '21.01.2015' from the original date of adjournment '12.04.2015', which intimation was not given to him, and on that day, the court below

dismissed the petition recording his absence, though, the respondent was also absent, also mentioning in the order that the appellant has been consecutively absent ever since the first date of hearing. It is according to him, the respondent has not filed any counter rebutting the allegations mentioned in the original petition and the court below ought to have directed the respondent to file counter, and when both the parties failed to appear on a particular date when the matter was listed for reconciliation, the court below ought not to have dismissed the petition, and, therefore, sought to set aside the order under challenge.

4. Heard Sri V.S.R.Anjaneyulu, learned counsel for the appellant, and Sri Venkateswara Rao Uppala, learned counsel for the respondent.

5. It is the submission of learned counsel for the appellant that irrespective of the merits, both the appellant and respondent have been presently residing at United States of America, and, therefore, in the absence of both parties on the date of hearing, the court below was not correct in dismissing the petition. It is also his submission that, though, the appellant is residing in United States of America, in case a particular date is given, he would appear before the court below, and, therefore, sought to set aside the order under challenge.

6. There is no serious objection from the

respondent's side. We have perused the order under challenge and the material placed on record. The copy of original petition would show certain allegations levelled against the respondent, which, according to the appellant, constitute the acts of cruelty, basing on which the dissolution of marriage has been sought. We are of the view, that irrespective of the ground agitated as ground No.5 in the grounds of appeal as to whether the court below changed the date of adjournment by listing it on '21.01.2015' from the original date of adjournment '12.04.2015', the order is liable to be set aside for the reason that the respondent was also not present and further in the absence of any reason that the respondent is put to any inconvenience. In such an event, we are inclined to set aside the order by giving a direction to both the parties to appear before the court below.

7. Accordingly, the instant Family Court Appeal is allowed setting aside the order dated 21.01.2015 in O.P. No.233 of 2014 passed by the court below, and consequently, O.P. No.233 of 2014 is restored to file of the said court. The appellant (petitioner-husband) and respondent (respondent-wife) herein shall appear before the court below on 6<sup>th</sup> of October, 2015 (06-10-2015). No order as to costs.

8. As a sequel thereto, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

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**R. SUBHASH REDDY, J**

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**A. SHANKAR NARAYANA, J**

Date: 27.08.2015  
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