

**HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO**

F.C.A.No.47 of 2015

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

This appeal, under Section 19 of the Family Courts Act, 1984 is filed by the appellant aggrieved by the order and decree dated 18.07.2014 in F.C.O.P.No.1583 of 2013 passed by the Family Court, Hyderabad, allowing the petition filed by the respondent under Sections 13(1)(ia) and 26 of the Hindu Marriage Act, 1955 seeking a decree of divorce by dissolving the marriage between the parties, which was performed on 4.6.1998.

2. The appellant and respondent herein are respondent and petitioner, respectively, in F.C.O.P.No.1583 of 2013. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in the O.P., before the Court below.

3. The petitioner-husband has filed the aforesaid F.C.O.P., with various allegations against the respondent-wife and sought for dissolution of marriage and also for custody of their son S. Paramesh. After receipt of notice, as the respondent-wife failed to attend the Court, she was set exparte. The Court below, after recording evidence of

the petitioner-husband as P.W.1 and marking documents under Exs.P.1 to P.3, has passed the impugned order dated 18.7.2014 granting a decree of divorce by dissolving the marriage between the parties, while dismissing the claim for custody of child as not pressed. Aggrieved by the same, the present appeal is filed.

4. Heard learned counsel for the parties and at their request, the appeal is being disposed of at the admission stage.

5. A perusal of the impugned order shows that the aforesaid O.P. was filed seeking dissolution of marriage on the ground of cruelty by respondent-wife. Except referring to the examination of the petitioner-husband as P.W.1 and marking of documents under Exs.P.1 to P.3, no finding is recorded by the Court below with regard to the allegation of cruelty by the respondent-wife. Even if respondent-wife failed to appear before the Court and was set exparte, it is obligatory on the part of the Court below to record a finding on the aspect of cruelty alleged against the respondent-wife. Unless a specific finding is recorded on the allegation of cruelty basing on the pleadings and the evidence on record, it cannot be construed that the impugned order is in accordance with Order XX r/w. Section 2 (9) of C.P.C.

6. For the aforesaid reasons, the impugned order dated 18.7.2014 is set aside and the matter is remanded to the Court below for fresh consideration and to pass appropriate orders in accordance with law. It is open to the respondent-wife to file counter affidavit and adduce evidence on her behalf. As the O.P., is of the year 2013, the Court below is directed to dispose of the O.P., as expeditiously as possible, preferably within a period of eight months from today.

7. Subject to the above directions, this appeal is disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH

REDDY

Dr. JUSTICE B.SIVA SANKARA

RAO
25.02.2015.
Msr

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