

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

FCA.No.67 of 2015

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

This appeal, under Section 19 of the Family Courts Act, is filed aggrieved by the order dated 06.08.2014 in O.P.No.659 of 2012 on the file of the Judge, Family Court, Hyderabad.

The aforesaid O.P was filed by the respondent herein under Section 13 (1) (ia) & 12 (1) (c) of the Hindu Marriage Act with a prayer to declare his marriage with the appellant as null and void or in alternative to dissolve their marriage. Basing on the memo filed by the respondent-husband for withdrawal of the case, the said O.P was dismissed by the impugned order dated 06.08.2014.

Learned counsel for the appellant-wife submitted that the respondent-husband filed the O.P in the year 2012 making serious allegations against the appellant-wife. He also submitted that on behalf of the appellant-wife, a memo was filed on 29.03.2014, consenting for grant of decree of divorce, without prejudice to her rights to pursue the other pending cases, but, without considering such consent memo, the impugned order is passed and, as such, the same is illegal. It is further submitted that when there is a

vested right accrued to the appellant-wife in view of the consent memo filed on her behalf, the same cannot be refused by permitting the respondent-husband to withdraw the case.

In this case, it is to be noticed that the respondent-husband has filed the O.P under Section 13 (1) (ia) & 12 (1) (c) of the Hindu Marriage Act with a prayer to declare his marriage with the appellant as null and void or in alternative to dissolve their marriage. Merely because the appellant-wife has filed a memo consenting for grant of decree of divorce, that will not confer any right to her for grant of decree of divorce. In view of the provision under Order XXIII Rule (1) of the Code of Civil Procedure, it is always open to the plaintiff to abandon the suit or part of his/her claim at any time after the institution of a suit. In that view of the matter, we do not find any ground to interfere with the impugned order.

The appeal is, accordingly, dismissed. However, it is made clear that if the appellant-wife wants to seek any relief, it is always open to her to file appropriate application before the competent Court and, on filing such application, the same shall be considered by taking into consideration the conduct of the parties.

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

18.03.2015

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