

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT JUSTICE K. SUJANA

FAMILY COURT APPEAL Nos.132 and 129 of 2022

COMMON JUDGMENT:

Heard Sri B. Shanker, learned counsel appearing for the appellants and Sri Dammalapati Srinivas, learned senior counsel representing Sri P. Pandu Ranga Reddy, learned counsel for the respondent. Perused the record.

2. Appellants filed O.P.No.53 of 2015 against the respondent seeking maintenance. Respondent-husband filed O.P.No.1043 of 2015 against appellant No.1 seeking dissolution of marriage on the ground of cruelty. Vide common order dated 10.10.2022 learned Judge, I Addl. Family Court, City Civil Court, Hyderabad, allowed O.P.No.53 of 2015 filed by the appellants in part granting maintenance of an amount of Rs.10,000/- per month each to the appellants herein and also allowed O.P.No.1043 of 2015 filed by respondent seeking dissolution of marriage by dissolving marriage of the 1st appellant and respondent,

performed on 25.12.2005. Feeling aggrieved by the said common order, appellants herein preferred the present appeals.

3. Sri B. Shankar, learned counsel appearing for appellants referring to paragraph No.34 of the impugned common order would submit that the court below without referring to the documents filed and marked by the 1st appellant, passed impugned order holding that the 1st appellant did not chose to adduce any evidence either oral or documentary in support of her claim. He has filed Certified Copies of the docket proceedings including docket order dated 03.01.2020, wherein the Court below specifically recorded as follows:

“Both parties present. Already chief of PW1 filed. PW1 present. Exs.A1 to A22 marked Sri S. Satyanarayana Advocate appointed as commissioner to record the cross examination of PW1. His fee fixed as Rs.1,500/- for commissioner report call on 17.01.2020.”

Therefore, according to him, impugned common order passed by the Court below is not on consideration of the entire material on record.

4. Whereas, Sri Dammalapati Srinivas, learned senior counsel would submit that the impugned common order is on consideration of the entire material on record and it is a reasoned order.

5. Though Exs.A1 to A22 were marked on behalf of the 1st appellant and cross examination was also recorded by the Advocate Commissioner appointed by the Court below, the same were not referred and not considered. Even in the appendix of evidence appended to impugned common order, there is no reference to the documents marked on behalf of 1st Appellant i.e., Exs.A1 to A22. Therefore, impugned common order dated 10.10.2022 in O.P.Nos.53 and 1043 of 2015 passed by the Court below is not in accordance with law and there is apparent error on the face of the record. As rightly contended by the learned counsel appearing for the appellant, court below passed the

impugned common order in hurried manner without application of mind.

6. It is relevant to note that Rule 143 of Civil Rules of Practice and Circular Orders, 1980 refers **Form of judgment** and is extracted below:

“(1) The judgment of the court shall be headed with the full cause-title of the suit, appeal or matter, the name of the Judge, and the date on which it was passed, and shall state the names of the parties or their advocates who appeared at the hearing and be drawn up in the consecutive numbered paragraphs and shall also state the dates on which the case was heard as in Form No.24 and a list of exhibits filed and witnesses examined shall be annexed thereto.

(2) The judgment and final order in matters other than the suits or appeals including contested Interlocutory Applications, Execution Petitions and Execution Applications, shall be drawn up in the same manner as the judgment and decree in a suit.

The word shall is used and therefore it is mandatory to mention the list of exhibits filed and to annex them to the impugned order. Court below failed to follow the said mandatory procedure. It is a glaring error apparent on the face of the record by the trial Court. The said error can be corrected at the initial stage / admission stage instead of keeping these appeals pending for years together. Thus, it is a fit case to set aside the impugned common order and remand the matter back to Court below for fresh consideration.

7. In the light of the aforesaid discussion without going into merits and demerits of the case, we are of the considered view that the Court below has committed an error, which is apparent on the face of the record in passing impugned order. Therefore, the impugned order is liable to be set aside.

8. Accordingly, F.C.A.Nos.132 and 129 of 2022 are allowed setting aside the impugned common order dated 10.10.2022 passed in O.P.Nos.53 and 1043 of 2015 and the

matter is remanded back to the learned Judge, I Addl. Family Court, City Civil Court, Hyderabad for passing orders afresh, strictly in accordance with law, on considering the entire material on record. However, it is made clear that we have not expressed any opinion on the merits of the case.

9. As discussed supra, both the OPs are of the year 2015. Therefore, the Court below shall make an endeavor to dispose of the aforesaid OPs, strictly in accordance with law, as expeditiously as possible, preferably within a period of two (2) months from the date of receipt of a copy of this Order. There shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the Family Court Appeal shall stand closed.

K. LAKSHMAN, J

K. SUJANA, J

August 01, 2023

**Note: Furnish C.C. forthwith.
L.R. Copy to be marked.
B/o.MS/PN**

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AND
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