

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 22913 OF 2017

(ARISING OUT OF SLP (C) No.31476/2016)

A.V.G.V. Ramu

...Appellant(s)

VERSUS

A.S.R. Bharathi

....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.
2. This appeal is filed by the husband against the final judgment and order dated 29.08.2016 passed by the Division Bench of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in F.C.A. No. 131 of 2016 whereby the High Court dismissed the appeal filed by the appellant herein against the

order dated 14.09.2015 passed by the Family Court, Hyderabad in O.P. No.9 of 2015 dismissing the petition filed by both the parties for mutual divorce under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”).

3. Facts of the case lie in a narrow compass so also the issue involved in the appeal is very short. It would be clear from the narration of the facts infra.

4. The appellant is the husband whereas the respondent is the wife. Both have married second time. The husband has one daughter aged around 7 years from his first marriage whereas the respondent has no issue from the first marriage or the second one. The marriage in question took place on 11.08.2013.

5. Unfortunately, the second marriage also did not go well. The appellant and the respondent had several differences soon after the marriage, which

eventually resulted in their living separately which continued till date.

6. On 30.12.2014, the appellant and the respondent with a view to end all disputes and their marriage entered into an Agreement/MOU (Annexure-P-8) for dissolution of their marriage with consent and agreed to make an application under Section 13-B of the Act.

7. Pursuant thereto both, the appellant and respondent, filed an application under Section 13-B of the Act before the Family Court at Hyderabad on 31.12.2014 being O.P.No. 9/2015. Thereafter the case was adjourned for 06.07.2015, 07.07.2015 and 12.09.2015. The respondent, however, did not appear on any of these dates. The Family Judge, however, on 14.09.2015 took up the case on expiry of six months' cooling period and finding that the respondent did not appear in the proceedings dismissed the application.

8. The appellant felt aggrieved and filed appeal under Section 28 of the Act in the High Court of Andhra Pradesh out of which this appeal arises. In the said appeal, learned counsel appearing for the respondent (wife) stated that her client (wife) does not give consent for dissolution of marriage. The High Court, therefore, dismissed the appeal by impugned judgment, which has given rise to filing of this appeal by way of special leave in this Court by the husband.

9. Notice of this appeal was sent to the respondent. Despite service, no one appeared for the respondent on any of the dates of hearing of this appeal.

10. Having heard the learned counsel for the appellant and on perusal of the record of the case, we are of the considered opinion to allow the appeal and while setting aside of the judgment/order of the Family Court and the High Court allow the

application made by the appellant and the respondent under Section 13-B of the Act and dissolve their marriage in terms of the Agreement/MOU dated 30.12.2014. This we prefer to do with the aid of our powers under Article 142 of the Constitution and also for the reasons given below.

11. First, the parties have admittedly entered into an Agreement/MOU dated 30.12.2014 (Annexure-P-8) agreeing therein to get their marriage dissolved by obtaining decree from the Court. Second, the Agreement/MOU bears the signatures of the appellant and respondent. Third, respondent never denied her signature on the Agreement/MOU nor its execution and nor its contents. Fourth, both the parties pursuant to Agreement/MOU actually filed an application under Section 13-B of the Act seeking dissolution of their marriage duly signed. Fifth, the respondent never stated before the Family

Court during the cooling period of six months that she wants to wriggle out of the application and does not wish to give her consent for mutual divorce. Sixth, the respondent also did not appear in person before the High Court and nor filed any affidavit except to say through her lawyer. Seventh, parties have been living separately for the last four years due to which their marriage has become irretrievable and there is no point in keeping such marriage alive because when asked the appellant whether he is prepared to continue with the marriage and would like to live with the respondent, his lawyer declined. Lastly, despite service of the notice of this appeal, the respondent too has also not appeared in this Court on any of the dates of hearing and nor sent any letter/affidavit/application or written request of any kind so as to know her stand in the appeal. This shows that the respondent is also not interested in

keeping the marital relations alive with the appellant.

12. In a situation like the one arising in the case, there is no reason for us to doubt the genuineness of the Agreement/MOU and its contents. Keeping in view the conduct of the respondent and further in the light of eight reasons set out above, we find this case to be fit one where we invoke our powers under Article 142 for passing a decree for dissolution of marriage between the parties in terms of the joint petition dated 30.12.2014 (Annexure -P-8).

13. It is for all these reasons, the appeal succeeds and is allowed. Impugned judgment is set aside. As a consequence, the joint petition (O.P. No.9 of 2015) filed by the appellant and the respondent under Section 13-B of the Act in the Family Court (City Civil Court) at Hyderabad is allowed.

14. The marriage between the appellant and the respondent performed on 11.08.2013 is accordingly dissolved by decree of divorce.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
December 14, 2017