

Eknath Vs. Roopa

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Court : Karnataka Dharwad

Decided On : Sep-10-2015

Judge : K.N. Phaneendra

Appeal No. : Civil Revision Petition No. 100031 of 2015

Appellant : Eknath

Respondent : Roopa

Advocate for Pet/Ap. : Sri. S.S. Yadrami

Judgement :

(Prayer: This petition is filed under Sec. 115 of CPC against the order dated 12/03/2015 passed in Civil Misc. No. 2/2013 on the file of the Judge Family Court, Belagavi, allowing the petition filed U/O 9 Rule 13 R/W Sec. 151 of CPC.)

1. The petitioner-husband has approached this Court calling in question the order passed by the Family Court, Belagavi, in Civil Misc. No.2 of 2013 dated 12/03/2015 wherein the Family Court has allowed the petition filed under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure by setting aside its earlier exparte judgment and decree dated 14/06/2012 passed in M.C. No. 58 of 2012.

2. Upon issuance of notice, the respondent has appeared through his counsel.

3. Sri. S.S. Yadrami, learned counsel for the petitioner strenuously contends before the Court that in view of Section 19 of the Family Courts Act, any order on facts or law passed by the Family Court is appealable and no other provision is made for invoking the provisions under the Code of Civil Procedure under Order IX Rule 13 for restoration of petition already disposed of by the Family Court. He, further, submits that Order IX Rule 13 of the CPC is not applicable in view of Section 19 of the Family Courts Act. Consequently, he also contended that after obtaining a decree for divorce, the petitioner has re-married and therefore, when the order has already been accomplished, the question of restoration of the same does not arise for consideration.

4. Contrary to the arguments, learned counsel for the respondent-wife submits that the Family Court has found that the notice issued to the respondent-wife is not properly served. Therefore, considering all the factual aspects, the Family Court has set aside its earlier order dated 14/06/2012 in order to provide an opportunity to the respondent-wife to contest the proceedings.

5. Learned counsel for the petitioner-husband has relied upon two rulings of this Court (1) reported in ILR 1988 KARNATAKA 1074 between T.V. SATYANARAYANA vs. SUBBA ARUNA MEENAKSHI wherein it is observed that:

As can be seen from Section 19, an appeal lies to the High Court against every Judgment or order made by the Family Court provided it is not an interlocutory order. Sub-Section (4) further provides that no appeal or revision shall lie to any Court from any judgment or order or decree of a Family Court. If sub-Section (1) had not been there, a revision petition under Section 115 would have been maintainable. But in view of sub-Section (4) even a revision petition cannot be entertained by this Court against an interlocutory order made by the Family Court.
?

(2) in the case of C. GOVINDARAJ vs. SMT. PADMINI, REPORTED IN ILR 2009 KARNATAKA 21, wherein at para 5, this court has observed that:

On perusal of the said provisions, it is to be noted that though the Hindu Marriage Act is of the year 1955, the Family Court Act has come into force in the year 1984

and after establishment of the Family Courts, under Section 19 of the Family Courts Act an appeal has been provided against the orders or judgment passed by a Family Court. This is a special statute and as such, prevails over general law especially in the light of non obstante clause. It is well-settled law that in the event of conflict between a special law and a general law, the special law must always prevail. In case of conflict between a special law and a general law, even if both enacted by the same legislative authority, the special law must displace the general law to the extent of inconsistency. The operation of the maxim generalia specialibus non derogant has been approved and applied by the Hon'ble Supreme Court in a catena of decisions. ?

6. On perusal of the above said rulings and also on perusal of Section 19 of the Family Courts Act, 1984, it is crystal clear that any order passed by the Family Court is appealable before the High Court. Therefore, the general law which is applicable for the purpose of preferring appeals or revisions are specifically excluded by introduction of Section 19 of the Family Courts Act. The rulings specifically lay down that the special law must displace the general law to the extent of inconsistency, but when there is no inconsistency, then what is the law applicable has to be looked into by this Court. For that, it is just and necessary to look into the provisions of the Family Courts Act whether altogether, the application of the CPC and the provisions therein are totally excluded. It is worth to note Section 10 of the Family Court Act which reads thus:

10. Procedure generally. “ (1) subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before a Family Court and for the purposes of the said provisions of the code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules, made thereunder, shall apply to the proceedings under chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other. ?

7. On meaningful reading and understanding of this provision, it makes abundantly clear that subject to other provisions of the Family Courts Act and Rules, provisions of CPC, 1908, and of any other law for the time being in force shall apply to the suits and proceedings other than the proceedings in Chapter IX of the Code of Criminal Procedure before the Family Court and for the purpose of said provisions, the Family Court shall be deemed to have all the powers of such court. This provision clearly indicates that the application of CPC so far as the procedure which is not inconsistent with the Family Courts Act, is not totally excluded. That means to say when there is no provision made under the Family Courts Act for the purpose of following a particular procedure, then the procedure contemplated under the CPC particularly, so far as this case is concerned under Order IX Rule 13 is applicable. Moreover, even in the absence of any procedure in the Family Courts Act or in the CPC, sub-section 3 of Section 10 of the Family Court Act empowers the court to adopt its own procedure for the purpose of arriving at a settlement in respect of the subject matter of the suit or proceedings or at the truth of the facts, as alleged by one party and denied by another. Therefore, in view of the above said provision, order IX Rule 13 has not been excluded by the Family Courts Act. In my opinion, the argument of the learned counsel is not tenable and the provisions of Order IX Rule 13 as adopted by the Family Court for the purpose of setting aside the ex parte order passed, is not illegal and does not call for interference.

8. The second point raised by the learned counsel is that after passing of the decree of divorce, he has remarried. Therefore, petition for restoration of decree of divorce does not give the power to the Court to entertain the application under Order IX Rule 13 of the Code of Civil Procedure. It all depends upon the facts and circumstances of each case.

Thus, the divorce court not only deals with granting of divorce or rejecting the divorce but also deal with other matters with regard to permanent alimony and maintenance to the wife etc. Therefore, if at all, the petitioner has again married, he can bring it to the notice of the Court and seek for appropriate relief before the Family Court itself. Therefore, the argument that he has remarried and as such application under Order IX Rule 13 of the CPC has become infructuous, is not tenable.

9. In this background, the factual aspects have to be looked into by its Court. The trial Court has categorically observed that in the original proceedings i.e., in M.C.(Matrimonial Case) in No. 58 of 2012, notice was ordered to the respondent. Notice was returned as refused and the Court has held service of notice as sufficient and the wife was placed exparte. The Family Court has examined the materials on record and has also observed that notice to the respondent in the said case returned unserved and the official also mentioned in the relevant records the shara that received a notice unserved as refused and kept in the file. The Court after noticing refusal shara of the respondent therein, made by the concerned bailiff, placed the respondent exparte. Ex.P-4 which was placed before the Family Court was also considered which discloses that the petitioner therein sought for copy of notice alleged to have been returned as refused by the respondent. The Court given an endorsement that notice was missing not found in the court ?. The respondent in the said case has also produced Ex.R-1-Process Register extract of Gokak Court wherein it was mentioned in the register that Notice of M.C. 58/2012 was returned with a shara PR i.e. Personally served ?. Having found the discrepancy with regard to service of notice that at one breath, the shara of the bailiff was to the effect that it was refused and the record in the process register it was personally served ?, the Court was of the opinion that service of notice on the respondent was not properly proved.

Therefore, giving such benefit to the petitioner therein, the family Court has passed an order setting aside the earlier exparte judgment and decree in M.C. No. 58/2012.

10. In view of the above said ambiguity pointed out by the trial Court which is also observed by this Court in the records, I find absolutely no mistake committed by the Family Court in restoring the original M.C. No. 58 of 2012 on to the file. Looking from any angle, the revision petitioner has not made out any ground to interfere with the order passed by the Family Court. Therefore, the Revision Petition deserves to be dismissed. Accordingly, dismissed. In view of disposal of the petition on merits, I.A. No. 2/15 does not survive for consideration and the same is also dismissed.

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