

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

CIVIL REVISION PETITION No.2192 of 2023

ORDER:

This Civil Revision Petition is filed seeking to set aside the order dated 14.09.2022 passed by the I Additional Family Court, Hyderabad in I.A.No.277 of 2021 in O.P.No.489 of 2020.

2. The aforesaid application was filed by the petitioner under Order I Rule 10(2) of CPC to implead one Kranti Kondapally in the O.P. as respondent No.2. By the impugned order, the trial Court dismissed the said application.

3. Heard Sri J.Prabhakar, learned senior counsel, representing Ms. V.Preeti Reddy, learned counsel on record for the petitioner, and Sri Ch.Koteswara Rao, learned counsel for respondent. Perused the entire material available on record.

4. The O.P. was filed by the petitioner-husband for dissolution of marriage between him and the respondent-wife, by granting a decree of divorce, on the ground of cruelty and adultery on the part of the respondent-wife.

5. In the said O.P., the petitioner filed an application under Order I Rule 10(2) CPC praying to implead one Kranti Kondapally in the said O.P. as respondent No.2.

6. In the affidavit, filed in support of the application, the petitioner alleged that on 25.02.2019, he received a call from one Kranti Kondapalli saying that he is in love with the respondent, who was his fiancée by then, and he even went to Vizag with the respondent and pleaded the petitioner to break the engagement. On questioning, the respondent confessed that she was in relationship with the said Kranti Kondapalli for the past six months and broke up with him. She further confessed that as the said Kranti Kondapalli threatened that he will spoil her marriage with the petitioner and kill her, fearing for life and security, she left to Vizag with the said Kranti Kondapalli. The petitioner was very upset on hearing all this, but the respondent assured that she will never contact the said Kranti Kondapalli again and completely broke the relationship with him and therefore, in good faith he married the respondent.

6.1. It was further alleged that even after marriage, the respondent used to be in regular touch with the said Kranti Kondapally over conference calls with her friend-G.Anusha and Ramya as she wanted to conceal about her illicit relationship. The petitioner also found some emails which showed that the

respondent was still in touch with the said Kranti Kondapally after marriage and she aborted the said Kranti's child in the past. The respondent caught the respondent red handed chatting with the said Kranti Kondapalli in the mid night. Therefore, in the said circumstances, he prayed the court to implead the said Kranti Kondapalli as respondent No.2 in the O.P.

7. The respondent filed counter-affidavit denying each and every allegation levelled against her regarding her illicit relationship with one Kranthi Kondapally. On the other hand, she stated that the petitioner used to torture and harass her by suspecting that she had illegal relationship with the said Kranti Kondapalli. The petitioner used to blackmail her in an emotional manner and even not allowed her to meet any of her friends and also to go to her mother's house. The respondent stated that the petitioner's intention is to avoid her by hook or crook and is trying to create a story for his gain of illegal desires and defame her in the society and therefore, he filed the present petition with all false and bald allegations against her. Hence, she prayed to dismiss the petition.

8. Before the trial Court, the proposed party i.e., the said Kranti Kondapally remained *ex parte*.

9. Learned counsel for the petitioner contended that the O.P. was filed seeking divorce on the ground of adultery and cruelty and that the trial Court failed to take into account several documents filed along with the application, a perusal of which shows that the issue of 'adultery' is one of the triable issues. He contended that the alleged adulterer is a necessary and proper party to the O.P.

10. Learned counsel further contended that the wife of the proposed respondent by name Indira filed a third party affidavit before the trial Court stating that she was aware that the respondent and her husband i.e., Kranti Kondapally were in continuous affair with each other and that she was compelled to file O.P.No.341 of 2021 on the file of XIV Additional District and Sessions Judge, Vijayawada, seeking a decree and the same was decreed on 28.03.2022. However, the trial Court overlooked the said fact and also the whatsapp chats, recordings of the CD between the respondent and the implead respondent and erroneously, dismissed the application. Hence, he prayed to allow this Revision Petition.

11. In support of his contentions, learned counsel for the petitioner relied upon the decisions of the erstwhile High Court of Andhra Pradesh in *Mirapala Venkata Ramana Vs. Mirapala Peddiraju*¹, *Ch.Padmavathi Vs. Ch.Sai Babu*² and *Radhika @ M.Lavanya Vs. M.Lokender*³.

12. In *Mirapala Venkata Ramana*'s case (1st cited supra), it was held as under:-

“It was specifically alleged that the appellant has sexual relations with one Meesala Satyanarayana who was residing nearby her matrimonial house. Meesala Satyanarayana has not been made a party and in fact, it was specifically pleaded by the appellant in her written statement. Even though the said plea was recorded by the lower Court, the lower Court did not concentrate on that aspect at all. In a case for divorce basing on adultery, the adulterer is a necessary party and ought to be made second respondent in the instant case. But, the respondent/husband had failed to implead the alleged adulterer and as such the OP is hit by non-joinder of necessary party. We are fortified in our view by the judgment of Allahabad High Court in Udai Narain Bajpai v. Smt. Kusum Bajpai {AIR 1975 All. 94}.”

¹ 2000 (2) ALD 723 (DB)

² 2013(1) ALD 165 (DB)

³ 2014(5) ALD 340 (DB)

13. In *Ch.Padmavathi's case* (2nd cited supra), at para 12 it was observed as hereunder:-

"It is to be very much reckoned with what is contained in Rule 8 of the Rules framed under the Hindu Marriage Act which reads as follows:

"Co-respondent.-(1) Where a husband's petition alleges adultery on the part of respondent, the alleged adulterer shall if he is living be made a co-respondent in the petition:

Provided, however, that in case the adulterer's name, identity or whereabouts are unknown to the petitioner in spite of reasonable inquiries made and the Court is satisfied that it is just and expedient so to do, it shall, on the application of the petitioner, dispense with the naming of the co-respondent.

(2) In every petition under Section 13(2) of the Hindu Marriage Act the petitioner shall make 'the other wife' mentioned in that section a co-respondent.

(3) In every petition under Section 11 of the Hindu Marriage Act, on the ground, that the condition in Section 5(1) thereof is contravened, the petitioner shall make the spouse, alleged to be living at the time of the marriage, a co-respondent."

The first clause is relevant here. There is no express provision by which this provision has been deleted. Significantly this provision in clear terms enjoins that where a husband's petition alleges adultery on the part of the respondent, the alleged adulterer shall if he is living be

made a co-respondent in the petition subject to the proviso incorporated thereunder, but this proviso is not applicable here because it is not the case of the parties that the identity of the alleged adultery has not been known to the petitioner. If this rule is to be enforced, definitely the alleged adulterer should be made as the co-respondent in the petition for the effective disposal of the case. This depends upon whether by virtue of the enactment of the amended provision of Section 13(1)(i), the same provision became redundant.”

14. In **Radhika @ M.Lavanya's** case (3rd cited supra), it was held that where husband alleges adultery on part of wife in seeking divorce, it is mandatory as per Rule 8 of the Rules framed under the Hindu Marriage Act to join the adulterer as party to the petition. The object of statutory Rule not only proceeds on public policy to prevent collusion and character assassination, but also to enable Court to effectually and completely adjudicate upon controversy between parties. In instant case, petitioner-husband, despite mentioning name of alleged adulterer as 'Ashok', still, did not join him as co-respondent. Non-joinder of alleged adulterer as co-respondent, therefore, certainly, renders impugned order unsustainable.

15. In the present case, the petitioner-husband filed O.P. seeking divorce on the ground of cruelty and adultery of his wife-respondent with one Kranti Kondapally and sought to implead the said person as respondent No.2 in the O.P.

16. That apart, a perusal of record discloses that the wife of the said Kranti Kondapalli filed OP against him seeking divorce on the ground of adultery with the respondent herein and the said case was decreed.

17. It is to be noted that since the finding of adultery would adversely affect the interest of adulterer, opportunity should be given to him to defend himself and to disprove the claim of adultery, the said adulterer should be arrayed in the proceedings which would help the court to effectively and completely adjudicate the controversy.

18. Further, as per Rule 8 of the Rules framed under the Hindu Marriage Act, 1955, joinder of alleged adulterer as a co-respondent in a case filed seeking divorce on the ground of adultery is mandatory.

19. The trial Court failed to take into consideration the third party affidavit filed by the wife of the alleged adulterer-Kranti

Kondapally stating that there is continuous affair between her husband and the respondent herein.

20. In the impugned order, the trial Court observed that there is no cogent evidence on record to show that the proposed party i.e., adulterer is a proper and necessary party to implead him in the divorce proceedings.

21. Therefore, in the facts and circumstances of the present case and in the light of the proposition laid down in the aforesaid judgments, this Court is of the considered opinion that the alleged adulterer-Kranti Kondapalli is a necessary and proper party to the O.P. and in fact, the O.P. would be hit by his non-joinder. The trial Court committed irregularity and illegality in dismissing the application filed by the petitioner and therefore, the impugned order is unsustainable and is liable to be set aside.

22. Accordingly, this Civil Revision Petition is allowed and the order dated 14.09.2022 passed by the I Additional Family Court, Hyderabad in I.A.No.277 of 2021 in O.P.No.489 of 2020, is set aside. I.A.No.277 of 2021 filed praying to implead Kranti Kondapally as respondent No.2 in the O.P. is allowed. There shall be no order as to costs.

23. Pending miscellaneous applications, if any, shall stand closed.

JUSTICE LAXMI NARAYANA ALISHETTY

Date:08.04.2024
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