

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

TUESDAY, THE SECOND DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT



THE HONOURABLE SRI JUSTICE RAVI NATH TIHARI
AND
THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL MISCELLANEOUS APPEAL NO: 226 OF 2024

Appeal under Section 43 Rule 1 of C.P.C. aggrieved by the order in I.A. No.1 of 2023 in H.M.O.P.No.76 of 2022, on the file of the Senior Civil Judge, at Tanuku, West Godavari District, dated 05-02-2024.

Between:

Vobilineni Sri Raghuram, S/o. Late Venkata Durga Prasada Rao, Aged about 35 years, Software Employee, R/o. Dangeru Village, K. Gangavaram Mandal, East Godavari District.

...Appellant/Respondent

AND

Vobilineni Likitha, W/o. Vobilineni Sri Raghuram, Aged about 29 years, Private Employee, R/o. D.No.11-52/2, Undrajavaram, Tanuku Mandal, West Godavari District.

...Respondent/Petitioner

Counsel for the Appellant: SRI K SATYANANDAM

Counsel for the Respondent: SRI P SWAMY

The Court made the following:

*HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
* HONOURABLE SRI JUSTICE NYAPATHY VIJAY
+ CIVIL MISCELLANEOUS APPEAL NO: 226/2024

%02.07.2024

Vobilineni Sri Raghuram,
S/o. Late Venkata Durga Prasada Rao,
Aged about 35 years, Software employee,
R/o. Dangeru Village, K.Gangavaram Mandal,
East Godavari District.

.....Appellant

And:

\$ Vobilineni Likitha,
W/o. Vobilineni Sri Raghuram,
Aged about 29 years, Private Employee,
R/o. D.No.11-52/2, Undrajavaram,
Tanuku Mandal, West Godavari District.

....Respondent

!Counsel for the petitioner : Sri K.Satyanandam

^Counsel for the respondent : Sri P Swamy

<Gist:

>Head Note:

? Cases referred:

HIGH COURT OF ANDHRA PRADESH

CIVIL MISCELLANEOUS APPEAL NO: 226/2024

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Aged about 29 years, Private Employee,
R/o. D.No.11-52/2, Undrajavaram,
Tanuku Mandal, West Godavari District.

....Respondent

DATE OF JUDGMENT PRONOUNCED: 02.07.2024.

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? ✓ Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Judgment? ✓ Yes/No



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3470]

TUESDAY, THE SECOND DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL MISCELLANEOUS APPEAL NO: 226/2024

Between:

Vobilineni Sri Raghuram

...APPELLANT

AND

Vobilineni Likitha

...RESPONDENT

Counsel for the Appellant:

1. T V JAGGI REDDY

Counsel for the Respondent:

1. P SWAMY

The Court made the following:

JUDGMENT: *(per Ravi Nath Tilhari, J)*

Heard Sri K.Satyanandam, learned counsel representing Sri T.V.Jaggi Reddy, learned counsel for the appellant and learned counsel for the respondent appearing through virtual mode.

2. The appellant is the husband of the respondent – wife.

3. The respondent filed H.M.O.P.No.76 of 2022 seeking divorce under Section 13(1)(ia) of Hindu Marriage Act, 1955. The appellant was set exparte by an order dated 06.02.2023. The respondent's (wife) evidence was completed and the matter was posted for orders on 27.02.2023. On 27.02.2023 i.e., the date fixed for delivering of judgment, the appellant filed an application under Order 9 Rule 7 r/w Section 151 CPC which was dismissed and the judgment was pronounced. The appellant thereafter on 29.03.2023 filed an application vide I.A.No.1 of 2023 under Order 9 Rule 13 CPC to set aside the exparte decree dated 27.02.2023, which has been rejected by an order dated 05.02.2024.

4. Challenging the order dated 05.02.2024, the present appeal has been filed.

5. The learned Civil Judge (Senior Division), Tanuku rejected I.A.No.1 of 2023 under Order 9 Rule 13 CPC, observing that there was no sufficient cause shown in the petition for the non appearance and unless sufficient cause was shown, exparte decree could not be set aside.

6. Order 9 Rule 13 CPC reads as under:

13. Setting aside decree ex parte against defendant.—

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further than no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

[Explanation.—Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]

7. Under Order 9 Rule 13 CPC, it is evident that an exparte order/decrece can be set aside if the cause for non-appearance is shown to be sufficient. In **Subodh Kumar v. Shamim Ahmed**¹, the Hon'ble Apex Court held that the application under Order 9 Rule 13 can be allowed only when the sufficient cause is made out to set aside the exparte decree. In that case no sufficient cause was made out to set aside the exparte decree.

8. Learned counsel for the appellant, before us also could not show from the petition under Order 9 Rule 13 CPC as to in which para, the sufficient cause was stated for absence, for setting aside the exparte decree.

9. In the present case, learned Trial Court has specifically recorded that no cause was mentioned much less satisfactory cause and therefore exparte decree deserves not to be set aside.

10. We do not find any illegality in the order.

11. Learned counsel for the appellant submits that the rejection of the application under Order 9 Rule 7 on 27.02.2023 was not justified.

¹ (2021) 15 SCC 105

12. We are not satisfied for the reason that the application under Order 9 Rule 7 CPC was filed on the date when the case was fixed for delivering the judgment. Such an application would not be maintainable on such date. In such cases, the remedy is to wait for delivery of judgment and file the application under Order 9 Rule 13 CPC.

13. In **Arjun Singh v. Mohindra Kumar**², the Hon'ble Apex Court held as under:

"18. So far as the case before us is concerned the order under appeal cannot be sustained even on the basis that the finding recorded in disposing of an application under O. IX Rule 7 would, operate as res judicata when the same question of fact is raised in a subsequent application to set aside an exparte decree under Order IX, Rule 13. This is because it is not disputed that in order to operate as res judicata, the court dealing with the first matter must have had jurisdiction and competency to entertain and decide the issue. Adverting to the facts of the present appeal, this would primarily turn upon the proper construction of the terms of Order IX Rule 7. The opening words of that rule are, as already seen, 'Where the Court has adjourned the hearing of the suit exparte. Now, what do these words mean? Obviously they assume that there is to be a hearing on the date to which the suit stands adjourned. If the entirety of the "hearing" of the suit has been completed and the Court being competent to pronounce judgment then and there, adjourns the suit merely for the purpose of pronouncing judgment under Order XX. Rule 1, there is clearly no adjournment of "the hearing" of the suit, for there is nothing more to be heard in the suit. It was precisely this idea that was expressed by the learned Civil Judge when he stated that having regard to the stage which the suit had reached the only proceeding in which the appellant could participate was to hear the judgment pronounced and that on the terms of Rules 6 & 7 he would permit him to do that. If, therefore, the hearing was completed and the suit was not "adjourned for hearing", Order IX. Rule 7 could have no application and the matter would stand at the stage of Order IX. Rule 6 to be followed up by the passing of an exparte decree making Rule 13 the only provision in order IX applicable. If this were the correct position, it would automatically follow that the learned Civil Judge would have no jurisdiction to entertain the application dated May 31, 1958 purporting to be under Order IX. Rule 7, or pass any order thereon on the merits. This in its turn would lead to the result that the application under Order IX, Rule 13 was not only competent but had to be heard on the merits without reference to the findings contained in the previous order".

14. There is another aspect. The perusal of the decree dated 27.02.2023, shows that the respondent therein i.e., the present appellant on receipt of the

² AIR 1964 SC 993

notice appeared through counsel and filed a memo stating that he has no objection to grant of divorce. The said para reads as under:

"3. On receipt of the notice, the respondent made his appearance through his counsel and filed a memo stating that he has no objection to grant divorce."

15. The above statement in the judgment/decreed has not been disputed by the appellant.

16. We did not find any merit in the appeal. The appeal is accordingly, dismissed.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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SD/- V DIWAKAR
DEPUTY REGISTRAR

SECTION OFFICER

**One fair copy to the Honourable Sri Justice Ravi Nath Tilhari
(For His Lordships' kind perusal)**

**One fair copy to the Honourable Sri Justice Nyapathy Vijay
(For His Lordships' kind perusal)**

To,

1. The Senior Civil Judge, at Tanuku, West Godavari District. **(with records if any)**
2. One CC to Sri. K. Satyanandam, Advocate [OPUC]
3. One CC to Sri. P. Swamy, Advocate [OPUC]
4. Eleven (09) L.R copies
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi
6. The Secretary, Andhra Pradesh High Court Advocates Association Library, High Court Buildings at Amaravathi
7. Three C.D Copies.

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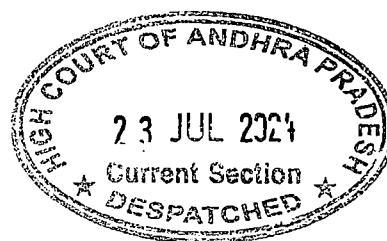
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HIGH COURT

DATED:02/07/2024

JUDGMENT + DECREE

CMA.NO.226 OF 2024



**DISMISSING THE C.M.A.
WITHOUT COSTS**

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

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This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the Suit and upon hearing the arguments of Sri K. Satyanandam, Advocate,

on behalf of the Appellant and of Sri P Swamy, Advocate appeared for Respondent.

This Court Doth Order and Decree as follows:-

1. That the Civil Miscellaneous Appeal be and is hereby dismissed.
2. That there is no order as to costs to this Appeal.

//TRUE COPY//

**SD/- V DIWAKAR
DEPUTY REGISTRAR**


SECTION OFFICER

To,

1. The Senior Civil Judge, at Tanuku, West Godavari District.
2. Three C.D Copies.

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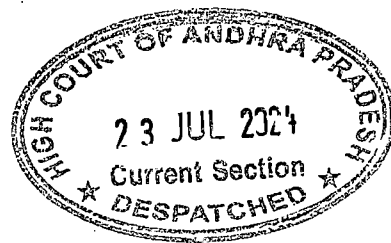
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HIGH COURT

DATED:02/07/2024

DECREE

CMA.NO.226 OF 2024



**DISMISSING THE C.M.A.
WITHOUT COSTS**