

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 17TH DAY OF DECEMBER 2004

BEFORE

THE HON'BLE MR.JUSTICE K.L.M ANJUNATH

WRIT PETITION NO.44555/2004(GM-FC)

Between:

Sudhakar Rao,  
aged 43 years, s/o  
L.Viswanatha Rao, r/o  
Rajappa Layout,  
Jannapura,  
Bhadravathi.

Petitioner

(By Sriyuths:K.Shivaji Rao &  
R.Bhaskar, Advs.)

And:

1. Smt.Sumitha,  
aged 36 years, w/o  
L.Sudhakar Rao, r/at  
No.3010/2, M.C.C.  
B Block, 8th Main,  
4th Cross,  
Behind Swimming Pool,  
Davanagere.

2. Sri.Sekhar, s/o Bhaskar  
Naidu, aged 40 years, r/at  
N.T.B.Road, Jannapura,  
Bhadravathi.

Respondents

(By Sri.S.Vishwajith Shetty, Adv. for R-1;  
R-2 notice dispensedwith:.)

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This Writ petition is filed Under Articles 226  
and 227 of the Constitution of India praying to quash  
Ann-C dated 11.10.2004 passed by the learned Judge,  
Family Court, Davanagere in M.C.24/2003.

This Writ petition coming on for orders this day,  
the Court made the following:-

**ORDER**

Notice to respondent-2 is dispensed with.

2. The petitioner has filed a petition against the respondent under section 13(1) of the Hindu Marriage Act seeking divorce against the respondent. The petition has been filed on two grounds. According to the petitioner, the respondent is having an illicit contact with 2<sup>nd</sup> respondent and that the respondent is also mentally not sound. In order to prove the allegation of insanity of respondent-1, the petitioner requested the Court to issue witness summons to the Doctors who have treated the 1<sup>st</sup> respondent. In spite of service of witness summons, the witnesses did not appear before the Court. Therefore, the petitioner filed an application under order 16 Rule 10 of CPC to issue proclamation against the witnesses. The said application has been rejected by the Trial Court. Being aggrieved

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by the said order, the present petition is filed by the petitioner.

3. I have heard the counsel for the petitioner and the counsel for the respondents.

4. The 1<sup>st</sup> respondent's counsel has no objection to allow the petition. In addition to that I have also examined the case pleaded by the petitioner.

5. It is not in dispute that the petitioner had obtained witness summons requesting the Doctors who had treated respondent-1 to come and depose before the Court. The witnesses have not appeared before the Court and they have not shown any cause.

6. In the circumstances, this Court is of the opinion that the petitioner was right in filing an application under order 16 rule 10 of CPC. The Trial Court without considering the provisions of order 16 Rule 10 of CPC has rejected the application. Therefore the order

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passed by the Trial Court is required to be set aside.

7. In the circumstances, the application filed by the petitioner under <sup>re</sup> Order 16 Rule 10 of CPC as I.A. 15 before the Family Court, Davangere in M.C.No.24/20003 is hereby allowed and the Trial Court to proceed with the case by issuing proclamation to the witnesses in accordance with law. The Writ Petition is allowed.

Sd/-  
Judge

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