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APHC010216802025



**IN THE HIGH COURT OF ANDHRA PRADESH
 AT AMARAVATI**

TUESDAY, THE 15th DAY OF SEPTEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE D RAMESH

AND

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CIVIL MISCELLANEOUS APPEAL NO: 305 OF 2025

Between:

1. RADHIKA @ HEPZIBHA BELUAH PEERIGA, W/o. Ramakurthi Prabhudas, Aged about 36 years, R/o. D. No. 7-123, Adi Narayana Puram, Epuru Palem, Prakasam District.

...Petitioner

AND

1. PRABHUDAS RAMAKURTHI, S/o. R. Venkateswara Rao Andrews Ramakurthi, Aged about 36 years, R/o. D. No. 21/275-4-1, Rail pet, Machilipatnam, Bandar Mnadal, Krishna District.

...Respondent

Appeal Under Section _____ against orders may be pleased to set aside the order and decree dated 29.11.2023, passed in D.O.P. No. 46/2022 on the file of the Learned I Addl. District Judge, Krishna Machilipatnam by allowing the CMA and pass such

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to condone the delay of 419 days in filing the above CMA

led against the order dated 29.11.2023 in D.O.P. No. 46 of 2022 on the file of the Hon'ble 1st Additional District and Sessions Judge, Krishna at Machilipatnam and pass such

IA NO: 2 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to dispense with the Certified Copy of the order dated 29-11-2023 in D.O.P.No. 46 of 2022 on the file of Additional District Judge, Krishna at Machilipatnam, pending disposal of the Civil Miscellaneous Appeal, and pass such

IA NO: 3 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to stay the operation of Order dated 29.11.2023 passed in D.O.P. No. 46 of 2022, on the file of the Learned I Addl. District Judge, Krishna, Machilipatnam and pass such

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to receive the following document as additional evidence and mark it as Ex.A-4 in the above Civil Miscellaneous Appeal. (i) "True Extract Certificate of Marriage dated 27.12.2024" issued from the (INA DIOCESE) Marriage Register Book. (Ex.A-4) and pass

Counsel for the Petitioner: K V RAGHU VEER

Counsel for the Respondent Y N ANJANEYACHARYULU

The Court made the following order:

**THE HONOURABLE SRI JUSTICE D.RAMESH
AND
THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA
CIVIL MISCELLANEOUS APPEAL No.305 OF 2025**

JUDGMENT: *(Per Hon'ble Sri Justice A. Hari Haranadha Sarma)*

Introductory:-

[i] Appellant is the wife and the respondent herein is her husband, and she is the respondent in D.O.P. No. 46 of 2022 on the file of I Additional District Judge, Krishna, Machilipatnam. The present appeal is filed questioning the sustainability of the order and decree dated 29.11.2023 passed by the learned Trial Judge, where under the marriage between the appellant and the respondent was dissolved and a decree of divorce was granted.

[ii] The respondent herein (husband) has filed D.O.P. No.46 of 2022 invoking Section 10 (i) (ix) (x) of Indian Divorce Act, 1869 with a prayer for dissolution of marriage and grant of divorce, on the grounds of cruelty and desertion, contending that the appellant herein was disinterested in the marriage with him. The learned Trial Judge granted the relief as prayed for, recording no representation for the wife, and noting cross-examination as 'Nil' and the evidence of wife as 'Nil'.

2. Heard Sri K.V.Raghu Veer, learned counsel for the appellant and Sri Y.N. Anjaneyachryulu, learned counsel appearing for the respondent and thoughtful consideration is given to the arguments advanced by both sides.

Arguments in the appeal:-

For the appellant:-

3. [i] The contentions raised by the parties in the pleadings are not properly addressed.

[ii] The proceedings should have been *ex parte* in nature, but the Order and Decree are indicating as if it is a contested one, whereby the appellant is deprived of the opportunity to avail the remedy available under Order IX Rule 13 CPC for setting aside an *ex parte* decree.

[iii] The procedure adopted by the learned Trial Judge is not proper. Though the proceedings *ex facie ex parte* in nature, the order and the decree indicating as if it is contested one.

For the respondent:-

4. [i] Orders under challenge are sustainable as the appellant did not choose to contest the case.

[ii] The respondent has opted for second marriage and filed the Certificate in this appeal as an additional evidence along with I.A.No.1 of 2026.

5. Now the points that require determination in this appeal are –

1) Whether the order and decree dated 29.11.2023 passed by the learned I Additional District Judge, Krishna, Machilipatnam are sustainable in

law or on facts? Or whether any interference is necessary? If so, on what grounds, and to which extent?

2) What is the result of the appeal?

Point No.1:-

Analysis:-

6. For appreciating the nature of the decree and the proceedings, this Court finds it appropriate to refer to the observations of the learned Trial Judge contained in paras 7 to 10 of the judgment dated 29.11.2023, which reads as follows:

“7. In trial, the petitioner as PW.1 filed his affidavit, deposing the above mentioned facts. He exhibited documents as in Exs.A1 to A3.

8. Though, the respondent opposed the petition by filing a Counter, she failed to cross-examine PW.1 through her Advocate even after granting giving sufficient opportunities. Further, the Advocate for the respondent reported that no further instructions were received from the respondent and hence, the cross-examination of PW.1 was treated as NIL.

9. As there is no presentation on behalf of the respondent the evidence of respondent was also closed.

10. Heard the learned counsel for the petitioner on 28.1.2023”

7. A bare reading of the above paragraphs in the order indicates that the matter was proceeded by the learned Trial Judge as if it is a contested one. When PW.1 is not cross examined, the learned Trial Judge ought to have proceeded *ex parte* as no evidence was there on behalf of the appellant by that time. The recourse should have been in terms of Order XVII Rule 2 of

CPC and resorting to Order IX for proceeding *ex parte*, whereas the learned Judge has closed the evidence. It is clear that the matter was posted for respondent side evidence. Further, by recording no representation for respondent (appellant), the evidence of respondent side was closed. Thereafter, learned counsel for the petitioner (respondent herein) was heard and the orders were passed as if they are on merits.

8. In the context stated above, this Court finds it proper to refer to Order XVII Rule 2 and Rule 3 and Order IX Rule 6 to 9, which reads as follows:-

“O-XVII – Rule 2:- Procedure if parties fail to appear on day fixed:

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

Explanation-

Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.”

O-XVII – Rule 3: Court may proceed notwithstanding either party fails to produce evidence, etc.

Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default,-

- (a) if the parties are present, proceed to decide the suit forthwith, or
- (b) if the parties are, or any of them is, absent, proceed under rule 2.

O-IX – Rule 6. Procedure when only plaintiff appears:-

(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then-

- (a) When summons duly served- if it is proved that the summons was duly served, the Court may make an order that the suit shall be heard *ex parte*.

(b) When summons not duly served- if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

(c) When summons served but not in due time- if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiffs' default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement."

Rule 7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

Where the Court has adjourned the hearing of the suit ex-parte and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day, fixed for his appearance.

Rule 8. Procedure where defendant only appears.

Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Rule 9. Decree against plaintiff by default bars fresh suit.

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit. and shall appoint a day for proceeding with suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Rule-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 that 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.]”

9. Further, this Court deems it proper to refer to the observations of a Division Bench of this Court in **Rashid Shapurji Chennai Vs. Collector Land Acquisition**¹, at para 2, which reads as follows:-

“ (2) Under Order 17, Rule 2 of the Code of Civil Procedure, where the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by O. 9 or make such other order as it thinks fit. Under Order 17, Rule 3, C. P. C. the court may proceed to decide the suit forthwith when a party to the suit fails to produce evidence or to cause the attendance of the witness etc. The proviso to Order 17 Rule 3 is clear to the effect that where there is a default under Rule 3 as well as default of appearance under Rule 2, the court will proceed under Rule 2. Inasmuch as there was a default of appearance under Rule 2, the court had to proceed under Rule 2 only. Under that provision it could dismiss the suit for default under Order 9 or make such other order as it thinks fit. Having regard to the express provision or Order 17, Rule 3 proviso, the expression as it thinks fit cannot mean that the Court can decide the suit. This proviso was introduced by way of an amendment on 27-4-1961, before the order under appeal was passed. Even in the absence of the proviso before the amendment of Order 17, Rule 3, it was held by this Court *in M. Agaiah v. Mohd. Abdul Kareem, (AIR 1961 Andh Pra 201)* that where there was a default under Order 17, Rule 3 as well as a default under Rule 2 the court should proceed only under Rule 2. The Madras High Court had also taken the same view , though some other High Courts took a different view and held that the Court can proceed under Order 17, Rule 3 if

¹ 1973 Supreme(AP) 154 : 1974 AIR(AP) 273 ; 1973 2 APLJ 390 ; 1974 KHC 1254

there is material on record to enable the court to come to a decision on the merits and that otherwise the Court should proceed under Rule 2. But whatever might have been the position before the amendment, it is clear that after the amendment, the court can only proceed under Order 17, Rule 2. It cannot proceed to decide the suit under Order 17, Rule 3 as has been done in this case by the Court below. Having regard to the clear provisions of the rules and the decision referred to above, the learned Government Pleader was not able to support the order of the Court below.”

10. Where a party did not place any evidence and there is failure on the part of such party to proceed further, the guidance of Order XVII Rule 2 is that the Court can resort to Order IX, whereby the Court can proceed *ex parte*. If it is the default of the plaintiff /petitioner, the proceedings may be dismissed. If it is default of the defendant/respondent, the proceedings may be disposed of *ex parte*, either by allowing or dismissing the claim basing on the evidence adduced by the plaintiff/petitioner. However, in the present case, the Court has resorted to treating the cross-examination as ‘Nil’ and the evidence of the respondent as ‘Nil’. It is clear that there is evidence of only the petitioner/ husband. There is no cross-examination even.

11. It is also relevant to note that,

(i) Arguments were heard by the learned Trial Judge on 28.11.2023 and the matter was disposed of on 29.11.2023 on the very next day.

(ii) The proceedings dated 31.10.2023 would show that the counsel for the respondent/ appellant reported no instructions and cross-examination was treated as ‘Nil’ and the evidence of the husband's side was closed.

(iii) The matter was posted to respondent's side evidence on 03.11.2023. On 03.11.2023, again the matter was posted for respondent's side evidence. When advocate for a party already reported no instructions, it is not known how the Trial Court recorded that both parties are not ready and posted the matter for respondent side evidence to 17.11.2023.

(iv) On 17.11.2023 again the matter was posted to 28.11.2023 for respondent side evidence.

(v) On 28.11.2023 it was recorded as respondent called absent and no representation and evidence of respondent side was closed and the matter was posted for arguments on 29.11.2023.

(vi) On 29.11.2023 the matter was disposed of on the very next day.

(vii) The above succession of events reflecting that the matter was taken up as if it is a contested one. The reasons best known to the Trial Court alone. *Ex parte* disposal and contested disposal may have different count for the Court, but for a party, the same will affect some procedural remedies and rights available to such party.

(viii) When the counsel for the party has reported 'no instructions' and when it is nobodies case, that the wife [*appellant herein*] was informed by her counsel, prior to such reporting of no instructions, proceeding further without notice to the said party by the Court, is found as denial of fair opportunity particularly when said exercise is examined in the light of the observations of

the erstwhile High Court of Andhra Pradesh in a case between **Thanneru Venkataiah v. Vadlamudi Kasaiah**², wherein para 7 reads as follows:

“7. Once a party engages an Advocate, the latter is under obligation to pursue the proceedings, on behalf of his client. If for any reason, he does not find it feasible to continue his appearance or assistance, he is required to put the client on notice, and inform the same to the Court. The obligation placed on an Advocate, under Order III C.P.C., subsists till the termination of the proceedings, unless it is brought to an end, in accordance with law. Except that he has reported no instructions, the counsel for the appellants in the trial court, did not either issue notice to the petitioners, nor filed an application before the trial court, to relieve him, of his obligation....”

(ix) Further, the Hon’ble Apex Court in **Malkiat Singh v. Joginder Singh**³, observed at para 6 and 7 as follows:-

“6. There is no denying the fact that the appellants had engaged a counsel to defend them in the civil suit. The counsel for the appellants pleaded “no instructions” but the court did not issue any notice to the appellants, who were admittedly not present on the date when their counsel reported no instructions in the court. It is nobody's case that the counsel informed them after he had reported no instructions to the court.

“7. The appellants in their application clearly pleaded that they were neither careless nor negligent and as soon as they learnt about the ex parte decree

² , 2006 SCC OnLine AP 1149 : (2007) 1 AP LJ 269

³ , (1998) 2 SCC 206 at page 208

dated 8-2-1992 and the order dated 18-11-1991, they filed the application to set aside the order and ex parte decree. A perusal of the record also reveals that the appellants were neither careless nor negligent in defending the suit. They had engaged a counsel and were following the proceedings. In this fact situation, the trial court, which had admittedly not issued any notice to the appellants after their counsel had reported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when the counsel reported no instructions. The appellants cannot, in the facts and circumstances of the case, be said to be at fault and they should not suffer. In taking this view, we are fortified by a judgment of this Court in *Tahil Ram Issardas Sadarangani v. Ramchand Issardas Sadarangani* [1993 Supp (3) SCC 256] wherein the Bench opined: (SCC p. 257, para 4)

“4. It is not disputed in the present case that on 15-3-1974 when Mr Adhia, Advocate withdrew from the case, the petitioners were not present in court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. We are of the view, when Mr Adhia withdrew from the case, the interests of justice required, that a fresh notice for actual date of hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer.”

12. Upon considering the way in which the matter is dealt with, particularly in the light of the Order-XVII Rule 2, this Court is of the considered view that the Trial Court ought to have issued notice to the appellant/wife, particularly in the context of the reporting no instructions by the learned counsel for the appellant was not preceded by any notice from his end to the client. Hence, the order and decree under challenge are liable to be set aside.

13. It is argued for the respondent herein (husband) that he has remarried after disposal of the case on expiry of limitation period. The consequences and validity of such remarriage, etc., are not relevant now. The applicability of Section 15 of the Hindu Marriage Act etc., arises in a different context, which will be addressed by an appropriate Forum, as and when necessary, considering the contentions raised and the material placed on record by then. The contention that a fair and reasonable opportunity to the appellant ought to have been provided to the appellant is found logical in the context of the case, particularly having regard to the nature of the proceedings. The respondent has filed the Marriage Certificate in this appeal as an additional evidence along with I.A.No.1 of 2026. However, the same is dismissed as the document is found not relevant.

Point No.2:-

14. In the facts and circumstances of the case, considering the nature of the proceedings between the parties, and for the aforesaid reasons, this **appeal is allowed** with the following directions:-

1) The decree and order dated 29.11.2023 passed in D.O.P. No. 46 of 2022 on the file of the Court of the I Additional District Judge, Krishna, Machilipatnam, are set aside.

2) D.O.P. No.46 of 2022 on the file of the Court of the I Additional District Judge, Krishna, Machilipatnam, shall stand restored.

3) The learned Trial Judge shall proceed with D.O.P. No. 46 of 2022 from the stage of cross-examination of PW.1 as per law by providing fair opportunity to both the parties.

4) Registry is directed to communicate a copy of this order forthwith.

5) Both the parties are directed to appear before the Court of the I Additional District Judge, Krishna, Machilipatnam on 28.10.2026, to proceed with the matter and cooperate with the learned Trial Judge, for expeditious disposal of the case.

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

JUSTICE D. RAMESH

JUSTICE A. HARI HARANADHA SARMA

Date: 16.09.2026
Pnr

Note:

L.R. Copy to be marked

Whether the order is:

Speaking	No	Reasoned	YES
Reportable	YES	Non-reportable	No

HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

CIVIL MISCELLANEOUS APPEAL No.305 OF 2025

16.09.2026

Pnr

*** THE HONOURABLE SRI JUSTICE D RAMESH**
AND
***THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA**
CIVIL MISCELLANEOUS APPEAL No.305 OF 2025

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Radhika @ Hepzibha Beluah Peeriga, W/o. Ramakurthi Prabhudas, Aged about 36 years, R/o. D. No. 7-123, Adi Narayana Puram, Epuru Palem, Prakasam District.

.... Appellant

Versus

\$ Prabhudas Ramakurthi, S/o. R. Venkateswara Rao Andrews Ramakurthi, Aged about 36 years, R/o. D. No. 21/275-4-1, Rail pet, Machilipatnam, Bandar Mnadal, Krishna District.

.... Respondent

! Counsel for the Petitioner/appellant : Sri K V Raghu Veer

! Counsel for the Respondents : Sri Y N ANJANEYACHARYULU

< Gist:

> Head Note:

? Cases referred:

1973 Supreme(AP) 154 : 1974 AIR(AP) 273 ; 1973 2 APLJ 390 ; 1974 KHC 1254
 2006 SCC OnLine AP 1149 : (2007) 1 AP LJ 269
 (1998) 2 SCC 206 at page 208

THE HONOURABLE SRI JUSTICE D.RAMESH
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 Aged about 36 years, R/o. D. No. 21/275-4-1, Rail pet, Machilipatnam,
 Bandar Mnadal, Krishna District.

.... Respondents

DATE OF ORDER PRONOUNCED: 16.09.2026

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE D.RAMESH
AND
THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

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| 1. Whether Reporters of Local Newspapers may be allowed to see the Order? | Yes/No |
| 2. Whether the copies of Order may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Order ? | Yes/No |

JUSTICE D. RAMESH

JUSTICE A.HARI HARANADHA SARMA

