

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

Dated this the 29TH day of August 2019

Present

THE HON'BLE MR.JUSTICE S.N. SATYANARAYANA

and

THE HON'BLE MR.JUSTICE P.G.M. PATIL

Miscellaneous First Appeal No.102793 of 2018 (FC)

Between

Smt. Renu, W/o Kamalesh Raval,
Age: 31 Years, Occ: Household Work,
R/O: Vijay Digital Studio,
Near Rajmata Dharmashala,
Main Road, Shironi District-307001,
Rajasthan State.

...Appellant

(By Sri. H. R. Gundappa, Advocate)

And

Kamalesh, S/o Maganlal Raval,
Age: 30 Years, Occ: Business,
R/o: H.No.003, Shagun Apartment,
3rd Cross, Kusugal Road,
Keshwapur, Hubballi-580029,
Dharwad District.

...Respondent

(By Sri. Gurudev Gachchinamath, Advocate)

This MFA is filed under Section 19(1) of the Family Court Act 1984, against the judgment and decree dated 07.08.2017, passed in Matrimonial Case No.268/2016 on the file of the Principal Judge, Family Court, Hubballi, allowing the petition filed under Section 13(1)(ia) and (ib) of the Hindu Marriage Act.

This MFA coming on for Admission this day, **S.N.Satyanarayana, J**, delivered/made the following:

JUDGMENT

The respondent-wife in M.C. No.268/2016 on the file of the Principal Judge, Family Court, Hubballi, has come up in this appeal impugning the judgment and decree dated 07.08.2017.

2. Admittedly, the petition in M.C. No.268/2016 was filed by the respondent herein, who is the husband of the appellant Smt. Renu. The appellant would state that their marriage had taken place on 11.05.2011 and thereafter in the wedlock, the parties have a male son by name Kushal. According to the appellant herein, the

respondent/husband threw her out of the matrimonial house on 01.07.2015. Since the appellant's parental house is in Shironi of Rajasthan State, she went there, and there she has filed a petition in F.C. No.53/2018 under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights with her husband.

3. It is after filing of the said petition, she came to know that her husband had secured decree of divorce in M.C. No.268 of 2016 on the file of the Principal Judge, Family Court, Hubballi. Thereafter, she secured certified copy of the judgment in the said proceedings and came to know that the respondent herein i.e., the husband of the appellant, had filed the matrimonial case by giving wrong address where the place 'Sirohi', where the appellant is residing, is wrongly shown as 'Shironi' and subsequently got the notice endorsed as 'refused' and got the matrimonial case filed by him disposed off on merits in securing a

decree of divorce *ex parte*. The said *ex parte* judgment and decree is in challenge in the present appeal.

4. Heard learned counsel for the appellant as well as the contesting respondent. On earlier date, this Court had directed the learned counsel for the respondent to secure the presence of the respondent. The learned counsel for the respondent would state that he could not get in touch with the respondent. That two mobile phone numbers provided to him are switched off, hence he was not able to get in touch with the respondent. All these things would clearly indicate that the entire proceeding before the Family Court at Hubballi was orchestrated in such a way to defeat the legitimate right of Smt. Renu and also maintenance of minor child Kushal born in the wedlock to the appellant and the respondent. It is also seen that the decree of divorce is granted without

appreciating the material on record and also by not following the statutory provisions which are required to be seen by the Court below while considering the grant of decree of divorce. Hence, the same is required to be set aside.

5. Accordingly, this appeal is allowed. The judgment and decree, dated 07.08.2017, passed in M.C. No.268 of 2016 on the file of the Principal Judge, Family Court, Hubballi, is hereby set aside. Consequently, the petition in M.C. No.268 of 2016 is restored. The matter is remanded back to the Court below for fresh consideration.

6. It is made clear that the hearing of the remanded matter shall be on 20th September 2019 on which date the Family Court shall first consider the maintenance payable to the respondent-wife in the

said proceeding and as well as the minor child born to the parties in the wedlock.

7. With such an observation, this appeal is disposed off. Both the parties, who are represented by their counsel in this proceeding, are directed to be present before the Family Court, Hubballi, on the next date of hearing to avoid further delay in the said proceedings.

In view of disposal of the appeal, I.A. No.2 of 2018 for stay does not survive for consideration.

(Sd/-)
JUDGE

(Sd/-)
JUDGE

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