

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2016

BEFORE

THE HON'BLE MR. JUSTICE A.S. BOPANNA

WRIT PETITION NO.32525/2015 (GM-FC)

BETWEEN:

... PETITIONER

AND:

... RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD:07.07.2015 PASSED IN I.A.VI IN M.C.NO.1607/2013 BY THE LEARNED I ADDL. PRINCIPAL JUDGE, FAMILY COURT BANGALORE AS PER ANNEXURE-G AND ETC.,

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court assailing the order dated 07.07.2015 passed on IA.No 6 in M.C.No.1607/2013. The petitioner has filed a petition in M.C.No.1607/2013 seeking annulment of the marriage under Section 12(1)(a)(c) of the Hindu Marriage Act, 1955. The respondent-wife has filed another petition in M.C.No.4150/2013 seeking restitution of conjugal rights.

2. The present issue relates to the petition in M.C.No.1607/2013. Since, the Court below had granted opportunity to the respondent and the same had not been availed, had taken the objections as not filed. Subsequent thereto, the respondent filed an application under Section 151 of CPC seeking that she be permitted to file her objection statement. The application was opposed by the petitioner. The Court below by the order dated 07.07.2015 has allowed the application on payment of cost of Rs.500/- and the objection statement filed by the respondent is taken on record. The petitioner

claiming to be aggrieved by the said order is before this Court.

3. The petitioner who appeared in person would submit that the Court below was not justified in allowing the application. It is contended that though sufficient opportunity was granted and in that regard reference was made to the different dates on which such opportunity had been granted, what is necessary to be noticed is that in the nature of the proceedings, whether the opportunity granted is justified or not. The petitioner would also refer to the decisions which in fact has been adverted by the Court below and the details of the same has been mentioned in the said order. The said decisions are in the particular circumstances where the reason assigned had been taken note and thereafter, the Courts had come to a conclusion.

4. However, insofar as the position of law as to whether the opportunity to file the objection statement can be granted subsequent to the expiry of the period as provided under Order 8, Rule 1 of CPC has in fact been

stated by the Hon'ble Supreme Court wherein, it is held that it is only directory and not mandatory. The said decision in Salem Advocate Bar Association -vs- Union of India has also been referred to by the Court below.

5. In the instant case, though the petitioner contends that the respondent has not put forth any justifiable reasons seeking such opportunity, what cannot be lost sight is that the instant case is a matrimonial dispute where personal allegations would be made by the parties. If that be so, unless such personal allegations as made are controverted and thereafter evidence is available before the Court below, the Court in any event cannot come to an appropriate conclusion. Therefore, if in that light, when it is seen that the petition filed by the petitioner is for annulment of the marriage under Section 12 of the Hindu Marriage Act, 1955, it is more so that the petition averments would have to be controverted and thereafter a conclusion is to be reached. Therefore, in that circumstance, in any event, the Court below was justified in allowing the

application and taking on record the objection statement.

6. The petitioner at this stage contends that the proceedings is being delayed before the Court below and therefore, the Court below be directed to conclude the proceedings expeditiously. In this regard, the Court below would have to keep its Board in view and if the parties seek early disposal of the matter, the same may be considered in accordance with law subject to the Board and if possible, dispose of the mater as expeditiously as possible.

In terms of the above, the writ petition stands disposed of.

**Sd/-
JUDGE**

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