



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 7403 OF 2019 (FC)

BETWEEN:

SRI.C. PUSHPA KUMAR,
S/O. LATE. CHALUVAIAH,
AGED ABOUT 51 YEARS,
R/AT. NO.44, 3RD FLOOR,
10TH CROSS, 9TH MAIN,
HARI LAYOUT,
JNANAJYOTHINAGAR,
ULLALU MAIN ROAD,
BENGALURU-560 056.

...APPELLANT

(BY SRI. H.V. HARISH, ADVOCATE)

AND:

SMT. MADHAVI
D/O. LATE MADALIAH,
AGED ABOUT 53 YEARS,
R/A NO.14, "JANANI",
11TH MAIN, 2ND CROSS,
HANUMANTHANAGAR,
BENGALURU-560 019.

...RESPONDENT

(BY SRI. SHARATH CHIDARAVALLI, ADVOCATE (ABSENT))

THIS MFA IS FILED U/S 19(1) OF FAMILY COURT ACT,
AGAINST THE JUDGEMENT AND DECREE DATED 02.07.2019 PASSED
IN M.C.NO. 723/2013 ON THE FILE OF THE IV ADDITIONAL
PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, DISMISSING THE
PETITION FILED UNDER SECTION 13(1)(ia) OF THE HINDU
MARRIAGE ACT.



THIS APPEAL, HAVING BEEN RESERVED FOR JUDGEMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **UMESH M. ADIGA, J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

Petitioner in M.C.No.723/2013 has preferred this appeal, challenging the judgment and decree dated 02.07.2019 passed by the IV Additional Principal Judge, Family court, Bengaluru (for short 'trial court'), dismissing the petition filed by him under Section 13(1)(ia) of Hindu Marriage Act, 1955.

2. For the sake of convenience, we refer to the parties as per their ranks before the trial court.

3. It is the case of the petitioner that his marriage was solemnized with respondent on 23.01.2003 at SBN Hall, Near Doddaganesh Temple, Bengaluru as per the Hindu rites and customs prevailing in their community. Prior to marriage with the respondent, petitioner had a wife but that



marriage had been dissolved by a decree of divorce. He informed these facts to the respondent prior to his marriage with respondent. Respondent was elder to him. At the time of marriage, petitioner was working in PWD as Engineer. Respondent was also working in Kidwai Cancer Institute, Bengaluru, as Assistant Social Welfare Officer. After marriage, respondent joined the petitioner and both of them were residing in a house situated at Bannerghatta road; thereafter, at the instance of respondent, they took a house at Hanumanthanagara and started residing in the said house. The relationship between them were cordial and they lead a happy matrimonial life.

4. It is the further case of the petitioner that a few days after the marriage, respondent used to nag the petitioner in a rude manner saying that it was his second marriage and she sympathetically considered his case and married him. She was insisting the petitioner not to talk with his parents as well as any of his relatives. She never allowed the petitioner to bring his parents as well as his relatives to his house. She was suspecting the character of



the petitioner for untenable reasons. Because of her suspicious character, she was suspecting that petitioner had illicit relationship with his colleagues and friends working in his office. Even she did not allow the petitioner to have a physical relationship with her. She was not allowing him to sleep peacefully during night and she was picking up quarrels in the night for one or the other reasons and many times she assaulted the petitioner and used to abuse him in filthy language. She was not cooking food at home. She was talking to her friends during night over telephone for a long durations. Whenever petitioner was advising her to behave properly, she was threatening him that she would file a false complaint on him in the police station. Even her brothers used to call the petitioner on phone and threaten him with dire consequences to follow the directions of respondent. Petitioner requested the elders of the family of respondent to advice her to lead happy and peaceful marital life with him. In spite of their advice, the respondent did not correct herself and continued her misbehavior with the petitioner.



5. It is further case of the petitioner that respondent had lodged the complaint against him and his family members with a false allegations that they were harassing her for dowry. On the said complaint, police registered a case, which forced petitioner and members of his family to obtain anticipatory bail from the competent court. When respondent came to know that the petitioner had obtained anticipatory bail from competent court, again she threatened petitioner that she would file complaint against him and his family members and once again lodged complaint before the police station and on that basis police again registered an FIR for the offences punishable under Sections 415, 495, 107, 116, 114 read with Section 34 of IPC. Because of which, once again, petitioner and members of his family approached the competent court for grant of anticipatory bail and obtained anticipatory bail from the competent court on 21.01.2013. Thereafter, respondent forcefully threw the petitioner out of the matrimonial house and thereafter the petitioner has been residing in one of his friends house. The petitioner tried his level best to settle the dispute and live



peacefully with respondent. However, due to non co-operation of the respondent, he could not continue his marital life. With these reasons, the petitioner prayed for granting decree of divorce, dissolving the marriage between him and the respondent held on 23.01.2003 at SBN Hall, Near Doddaganesha Temple, Bull temple road, Bengaluru.

6. Respondent denied the contentions of the petitioner in respect of allegations made against her. She admitted her relationship with the petitioner and the marriage between them. She has contended that till the filing of this petition, she was unaware of the first marriage of petitioner with another woman and obtaining of divorce by the petitioner from the said marriage. She denied that it was intimated to her prior to marriage with petitioner. She has further contended that both were leading happy marital life till December, 2012. In the month of December 2012, petitioner left the matrimonial house without informing the respondent. Thereafter, petitioner completely neglected the respondent and failed to discharge his marital duties and changed his behaviour towards respondent. He mentally



harassed her and manhandled her and when situation reached the extreme, she gave complaint to the jurisdictional police. The respondent never persuaded the said complaint filed against the petitioner. She has never come out from the matrimonial house and on the contrary, petitioner himself left the matrimonial house without any reasonable cause. Respondent tried to settle the dispute and requested the family members to advise the petitioner so that she can lead a happy marital life with petitioner and inspite of said advice, the petitioner did not agree. With these reasons, she prayed to dismiss the petition.

7. The petitioner examined himself as PW-1 and got marked 3 documents as per Exs.P-1 to P-3. The respondent examined RWs.1 to 3 and got marked documents as per Exs.R1 to R11.

8. We have heard the arguments of learned counsel for appellant. The learned counsel for respondent did not argue the matter.



9. The learned counsel for appellant submits that this petition is filed on the ground of cruelty of wife seeking divorce. The petitioner was examined as PW-1 and in his evidence has narrated the entire facts of the case. During his cross-examination nothing was brought out to discard his evidence. Marriage of petitioner and respondent had taken place during the year 2003. With all these difficulties, up to December, 2012 nearly for a period of 9 years, petitioner has tolerated all the harassment of the respondent. Respondent was harassing him on the ground that it was his second marriage. It is stated in the petition as well as in the evidence of PW-1 that prior to his marriage with the respondent, he has disclosed these facts to respondent and there was no reason for him to suppress it. It is also pertinent to note that in age, respondent was elder to the petitioner. But still he agreed to marry her with an intention to lead happy and peaceful marital life. Due to adamant behavior of respondent, she could not lead normal marital life. Respondent never allowed the petitioner to bring his parents to his house and even she did not like his relatives



coming to his house. Absolutely, the relationship between petitioner with his relatives were cut off after the marriage with respondent. She did not comply matrimonial obligations. She did not cook food for petitioner, on the contrary, forcing him to wash her clothes. As a dutiful husband, he insured his life and made her a nominee. He purchased site in a joint name though entire amount of sale consideration was paid by him. He obtained a house property on lease by paying advance amount from his salary. He took maximum care of her health and she was unable to conceive because of health issues. Even he has consented for infertility treatment. Even though she was unable to conceive, he did not make any grievance about the same. In spite of all these co-operation from the petitioner, respondent was harassing him and even she was not permitting him to have a physical relationship with her. She did not allow him to have a peaceful sleep during the night and use to quarrel on one or other reasons during the night. By all these reasons, she made his life miserable. In addition to that, she was suspecting that he was having illicit



relationship with his colleagues working in his office and suddenly use to visit his office to know the same. On the basis of some alleged messages, she even lodged complaint against him alleging that he married illegally one Ashwini and a criminal case was registered against the petitioner and his relatives and he has been facing trial in the said case. Even prior to that, she lodged complaint against the petitioner and his relatives alleging that they had demanded dowry from her. All these reasons, clearly show that she had treated the petitioner cruelly and made his life miserable and it was difficult for the petitioner to lead marital life with her. The learned trial Judge has not at all considered these facts and held that it was natural wear and tear of the family and on that basis divorce cannot be granted and it does not amount to cruelty. The said findings of the learned trial judge is erroneous.

10. The learned advocate for appellant further submits that the learned trial Judge has dismissed both the petitions filed under Section 13 as well as Section 9 of the Hindu Marriage Act. The petitioner has filed the petition



under Section 13(1)(ia) of Hindu Marriage Act, for divorce on the ground of cruelty and it was also dismissed. The learned trial Judge observed that in view of the marriage of the petitioner for the second time during the life time of first wife as alleged by respondent, it was not a fit case to allow the relief of restitution of conjugal rights and hence petition filed by respondent under Section 9 of Hindu Marriage Act was also dismissed. That discloses the perversity of the learned trial Judge in passing the impugned judgment.

11. The learned counsel for the appellant has further submitted that respondent threw the petitioner out of matrimonial house during the year 2012. The fact of living separately from the year 2012 is not in dispute. It is not in dispute that the appellant has tried his level best to settle the issues. However, it is not materialized and respondent is adamant and illegally and falsely she had filed complaint against the appellant before the higher authority, because of which enquiry was held against him. In the said departmental enquiry, the disciplinary authority found that



the allegation against the petitioner that he remarried another woman during the lifetime of his first wife was not proved. Similarly, she had lodged several complaint against the petitioner and his relatives. The marital relationship between the petitioner and respondent has irretrievably broken down, therefore, it is a fit case for grant of decree of divorce. The learned trial Judge has not at all considered these facts and erroneously dismissed the petition. Therefore, prayed to allow the appeal and grant the decree of dissolving the marriage of the petitioner with respondent.

12. The respondent's counsel was absent through out and after reserving the matter for judgment, he filed a memo to provide him an opportunity to argue the matter. To give an opportunity to him, the case was taken up and on that day also the learned counsel for respondent did not appear to argue the matter.

13. The following questions emerges for our determination:



- i. Whether the learned trial Judge is justified in dismissing the petition filed under Section 13(1)(ia) of the Hindu Marriage Act, 1955?

14. Our answer to the above question is in the Negative for the following reasons:

Both the side parties have led evidence and counter evidence. PW-1 in his evidence has reiterated the petition averments. According to him, respondent was not allowing him to talk to his parents or his relatives and even she was not allowing him to invite his parents as well as his relatives to his house. Respondent was hating his relatives and therefore, she never used to have contact with them. In the cross-examination of RW-1, she has stated that the petitioner has got a big family, he has five brothers and one sister. All the brothers of the petitioner were residing separately and at the time of her marriage with the petitioner, parents of the petitioner were alive and her in-laws were residing in a village by name Kuppe of Kunigal Taluk. She has further stated that she visited house of her in-laws whenever petitioner used to take her. She had not



attended any functions of petitioner's family. She had not visited the house of any of his relatives. She justifies the same that the petitioner did not take her along with him. Therefore, she had not visited any of the relatives house of the petitioner. From the answers given by respondent stated above, one can infer that the contention of the petitioner is probable.

15. It is not in dispute that they married in the year 2003 and till December, 2012, both were living together in Bengaluru. Nearly, about 9 years, they resided together. It is also not in dispute that none of the relatives of petitioner had visited their house. These facts probabilise the contention of the petitioner that due to attitude of respondent, his relationship with his parents, brother and sisters was cut off, definitely it amounts to cruelty.

16. The appellant in his pleadings as well as in his evidence has stated regarding the torture given by the respondent. He has stated that respondent was not cooking food at home. He was not allowed to sleep peacefully during



night. He was not allowed to have physical relationship with respondent, on the ground he has extra marital affairs. Respondent had filed criminal cases against him and his relatives. She was forcing him to wash his clothes etc. It appears he was denied basic necessities. Said conduct of respondent also amounts to cruelty. Respondent in her pleadings and evidence has categorically admitted that the petitioner was looking after her very well; he took insurance policy and nominated her to receive benefits. He purchased the site in the joint name of himself and respondent. He took her to treatment for infertility. He has taken her to different places on tour for which she has produced the photographs. When such is the facts the contention of respondent that petitioner was not taking care of her is not believable. If petitioner was residing very happily with respondent then why he would suddenly neglect or discard her from December, 2012 and leave the matrimonial house ? There is no proper explanation in this regard by the respondent. It indicates that the respondent is suppressing true facts from the court.



17. It is the contention of the petitioner that respondent was all the while threatening him that she would file complaint against him and members of his family and would see that they would be kept behind the bars. With the said threat, she was directing him to follow all her directions. Petitioner has stated that respondent had filed complaints against him and members of his family i.e. about 2½ months prior to he was thrown out off the matrimonial house and on that basis, a case was registered against him and members of his family for the offences punishable under Section 498A and 506 read with Section 34 of the IPC and Section 3 and 4 of Dowry Prohibition Act. Filing of the complaint is not denied by the respondent. According to her, petitioner harassed her, therefore for the purpose of threatening him, she lodged a complaint and she did not pursue the said case and she did not pursue to file a charge sheet against the petitioner. It is pertinent to note that it was a criminal case and no question of persuasion is required for investigation of the matter. Petitioner is a Government servant and working in PWD as a engineer. Filing a criminal case against the petitioner



definitely affects his service carrier. Respondent is also a Government servant. She must know that if any criminal case is registered or if a government servant is arrested and detained in custody for more than 48 hours, there is every likelihood of keeping such a Government servant under suspension and holding a departmental enquiry, if it is proved, he could be removed from service. Knowing fully well about these facts, she lodged a complaint and says that she did not pursue the said complaint. The said conduct of respondent definitely amounts to cruelty. Every human being has a self respect and he has every right to maintain his self respect. If he did not demand dowry and harassed her for purpose of dowry, then why she should complain casually against him and the members his family? It is abuse of process of law. These facts were not considered by the learned trial Judge.

18. It is the contention of the petitioner that respondent was always suspecting him and alleging that he had extra marital relationship with one of the colleague working in his office. The petitioner in the cross-examination



of respondent has suggested that respondent frequently visited the office of the petitioner to verify his presence in the office. This fact was denied by the respondent but from the facts of the present case, the said suggestions cannot be ruled out. It is allegation of the respondent that petitioner had married a lady by name Ashwini during the year 2013 and at the abetment of brother of Ashwini by name Narayana, he married the said Ashwini. It is also stated by the respondent that the said Ashwini and Narayana used to send vulgar messages to her and abusing her through messages and insisting her not to live with the said petitioner since Ashwini had married him. A criminal case was also registered against the petitioner herein and others and the case is pending before the competent court. Since the matter is pending before the criminal court, it is burden on the prosecution to prove as to whether petitioner had married another lady during the subsistence of marriage with respondent.

19. RW-1 to 3 in their evidence have stated that on the basis of the messages sent by Smt. Ashwini and the said



Narayana, she lodged the complaint and she has not witnessed the marriage of petitioner with Ashwini. It has also come in the evidence that respondent has filed original suit seeking a relief of declaration to declare that the said Ashwini is not a legally wedded life and the said marriage is void. It is pertinent to note that respondent did not examine any of the witnesses to the said marriage. During the course of the arguments in appeal, the learned counsel for appellant has produced memo along with the copy of the enquiry report submitted by the enquiry officer in the Departmental enquiry held against the appellant-petitioner. In the said case, the Disciplinary Authority, after appreciating the evidence held that respondent herein was unable to prove that petitioner has married for second time during the subsistence of his marriage with respondent. Hence, he was exonerated from the said departmental proceedings.

20. Respondent contends that she wants to continue matrimonial relationship with petitioner. If the petitioner had already married to Ashwini, then it is difficult to believe that respondent would share bed with the petitioner who is said



to be married another lady during subsistence of his marriage with her. The contention of respondent is that petitioner filed this application with an intention to regularize his marriage with Ashwini if the divorce is granted. The said contention appears to be not tenable. A criminal case was registered and it appears to be on trial. If marriage of Smt. Ashwini with petitioner is proved then as on the date of the said marriage, he was not a divorcee and divorce given to any spouse is not a retrospective effect and it has prospective effect. Even if he had committed an offence punishable under Section 494 of IPC, i.e marrying another lady during subsistence of the earlier marriage then he is liable for punishment. Therefore, the said contention that if he gets divorce from respondent then he could regularize his marriage with Ashwini is not legally tenable contention.

21. The petitioner has proved that due to unbearable torture and cruelty, he could not lead marital life with the respondent. Under such circumstances, the learned trial Judge has not considered these facts properly and on the basis of law laid down by the Hon'ble Apex court, it was held



that it is a natural wear and tear of the family and it is not sufficient ground to grant divorce. It is true that the allegation made by the petitioner that respondent was not preparing food at home and etc., may be a wear and tear of the family and that cannot be considered seriously by the court to grant divorce. But as already discussed in above paragraphs, the allegations alleged against the respondent by the petitioner are different. They cannot be considered as natural wear and tear in the family. The grounds stated above certainly amounts to cruelty and it is proved by the petitioner. Therefore, petitioner was entitled for the decree of dissolving the marriage with respondent.

22. In the objections, repeatedly it is stated that she could not conceive and once she had conceived but it was aborted due to some medical reasons. Even she tried for infertility treatment but was not successful. Probably this might be one of the reasons for her depression. This might have resulted in often dispute between the petitioner and respondent. These factors must have created some problem in the relationship between the petitioner and respondent.



Cumulative effect of the same was the disharmony in the family, which resulted in treating petitioner with cruelty. Petitioner reached such a situation, as he found that there was no other go but to seek for divorce and he filed a petition for divorce. For the aforesaid discussions, the petitioner is entitled for dissolving of his marriage with respondent.

23. If we consider the case on practical view then even if the appeal is dismissed the status of parties may not change. It is not in dispute that from December, 2012 onwards, both petitioner and respondent are residing separately. Their relationship was strained and has broken down. After he left the matrimonial home, it was alleged against him that the he married for second time with a lady by name Ashwini for which a complaint was given by respondent against the petitioner and the investigating officer after recording the statement of witnesses, has charge sheeted the petitioner along with some others for the said offences. When such is the case, it is difficult to believe that she would accept the petitioner even though he married



for the second time during the subsistence of his marriage with her. Therefore, it appears, she did not challenge the order passed by the family court, filed under Section 9 of the Hindu Marriage Act. Looking to these situation, the relationship between petitioner and respondent became irretrievably broke down. Therefore, it is a fit case to grant relief of divorce. For the above said discussions, we pass the following:

ORDER

- i. The appeal is ***allowed***.
- ii. The judgment and decree passed in M.C.No.723/2013 dated 02.07.2019 by IV Additional Principal Judge, Family Court, Bengaluru is set aside.
- iii. The marriage solemnized between the petitioner and respondent on 23.01.2003 at SBN Hall, Near Doddaganesha temple, Bengaluru is dissolved by decree of divorce.



iv. All the pending applications stand disposed off as it do not survive for consideration.

Registry is directed to send back the records along with the copy of the judgment to the trial court.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE