



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 179 OF 2018 (FC)

C/W

MISCELLANEOUS FIRST APPEAL NO. 178 OF 2018 (FC)

IN MFA No. 179 OF 2018

BETWEEN:

SRI. N. RAVIKUMAR,
S/O LATE SRI. NANJUNDAPPA,
AGED ABOUT 47 YEARS,
R/AT NO.73, 1ST MAIN ROAD,
CHAMARAJPET,
BENGALURU-560 018.

...APPELLANT

(BY SRI. CHANDRASHEKAR P.PATIL., ADVOCATE)

AND:

1. SMT. S.N. LALITHA,
W/O SRI.N.RAVI KUMAR,
AGED ABOUT 38 YEARS,
R/AT C/O NAGARAJ S.G.,
9TH CROSS, SRINAGAR EXTENSION,
DEVARAYAPATNA POST,
TUMKUR-572 101.
2. MASTER TARUN,
S/O SRI.N.RAVI KUMAR,
AGED ABOUT 15 YEARS,
R/AT C/O. NAGARAJ S.G.,
9TH CROSS, SRINAGAR EXTENSION,
DEVARAYAPATNA POST,
TUMKUR-572 101,
MINOR REPRESENTED BY



HIS MOTHER/ NATURAL GUARDIAN,
AND NEXT FRIEND SMT.LALITHA.

...RESPONDENTS

(BY SRI. M.S. RAJENDRA, ADVOCATE FOR R1 AND R2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE ORDER DT.25.10.2017 PASSED ON O.S.NO.198/2003 ON THE FILE OF THE 2ND ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, ALLOWING THE SUIT FILED U/O.7 RULE 1 OF CPC, READ WITH SEC.18 & 20 OF THE HINDU ADOPTION & MAINTENANCE ACT.

IN MFA NO.178 OF 2018

BETWEEN:

SRI. N. RAVI KUMAR
S/O LATE NANJUNDAPPA,
AGED ABOUT 50 YEARS,
R/AT NO.73,1ST MAIN,
CHAMARAJPET,
BENGALURU - 560 018.

...APPELLANT

(BY SRI. CHANDRASHEKAR P.PATIL., ADVOCATE)

AND:

SMT. S.N. LALITHA,
W/O SRI.N.RAVI KUMAR,
AGED ABOUT 40 YEARS,
9TH CROSS, SRINAGAR EXTENSION,
DEVARAYAPATNA POST,
KYATHASANDRA,
TUMKUR - 572 101.

...RESPONDENT

(BY SRI. M.S. RAJENDRA, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF THE FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED:25.10.2017 PASSED IN M.C.NO.1560/2008 ON THE FILE OF THE II ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, DISMISSING THE PETITION FILED U/S 13(1) (ia)& (b) OF HINDU MARRIAGE ACT.



THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.09.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT 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)

These appeals arise out of the judgment and decree dated 25.10.2017 passed by the learned II Addl. Principal Judge, Family Court, Bengaluru, (for short, `Family Court'), in M.C.No.1560/2008 and O.S.No.198/2003.

M.C.No.1560/2008 was filed by the appellant-husband for the relief of decree of divorce and O.S.No.198/2003 was filed by the respondents-wife and son for the relief of maintenance. The Family Court by the impugned judgment and decree, dismissed M.C.No.1560/2008 and awarded maintenance to wife and son in O.S.No.198/2003. Both the judgments are challenged by the appellant/husband in the present appeals.



2. For the sake of convenience, we refer to the parties as per their ranks before the Family Court in M.C.No.1560/2008.

3. The marriage between the parties and birth of their son is not in dispute. Therefore, there is no need to refer to the particulars in detail.

4. The appellant-husband sought for divorce on the ground of cruelty, as well as desertion under Section 13(1)(i-a) and (i-b) of Hindu Marriage Act, 1955. The allegations of the husband against his wife are that she was ill-treating him, insulting him in the presence of his relatives and friends and was not co-operative in physical relationship, and was always quarrelling with him. She was frequently leaving him and going to her parents' house without informing him. A few days after the marriage, she left him and started permanently residing in her parents' house at Tumakuru. He made all efforts to take her back, but it went in vain. She deserted him about five to six years prior to filing of the matrimonial case. On these grounds, he prayed for a decree of divorce.



5. The respondent-wife in the matrimonial case has admitted the relationship, but denied the allegations made against her. According to her, her husband was ill-treating her; not providing basic amenities and assaulting her. He was insulting her and threw her out of his house when she was pregnant. Helplessly, she started residing in her parents' house. She delivered a baby boy on 22.03.2003. Even her husband did not come to her house to see the baby or take care of her. She did not desert him voluntarily, but due to harassment and cruelty of the appellant, she had to reside in her parents' house.

She further contended in the original suit – O.S.No.198/2003 that her husband did not pay the maintenance to her and her son for their basic necessities and education of her son. Hence, she was forced to file the suit for maintenance.

6. Both parties led evidence before the Family Court in both the cases. Both the cases were tried separately by the trial Court.



7. Regarding cruelty, there are allegations and counter allegations. Both parties have led the evidence in this regard. The said allegations made by both parties has not been substantiated by any materials either documentary or oral. Both parties did not examine any of the witnesses to prove the misbehaviour of each other as contended in the petition, as well as counter filed by the wife. Therefore, the learned trial Judge rightly rejected the claim of the appellant. On re-appreciation of the evidence on record, we hold that there are no reasons to interfere with the findings of the learned trial Judge rejecting the claim of appellant-husband seeking divorce on the ground of cruelty.

8. It is not in dispute that wife has been residing in her parents house since 2002 when she was pregnant. She was not taken back to matrimonial house. Therefore, from the year 2002, she has been residing in her parents' house, and deserted the husband. She made allegations of cruelty administered against her by her husband as already stated above. Owing to the cruelty meted to her by her husband, she was unable to reside with him and as such, she was



living separately. At the cost of repetition, she has not substantiated the said contention. In addition to that, she contends that after delivery of baby boy, her husband did not come to her house and take her back to his house. Probably that must be the reason for not returning to her husband's house. Therefore, it appears she deserted her husband from the year 2002. The appellant filed the petition during the year 2008. It shows that she has been residing in her parents house for a period of more than 5 years prior to the petition. She deserted her husband without any justifiable reasons for a period of five years prior to filing of the petition. Hence, there are justifiable grounds for the husband to seek for divorce.

9. Undisputedly, both parties are residing separately for the last 22 years as on this date. From the submission of the husband before the Court during conciliation, he stated that he has threat to his life by his wife and only for the sake of property, she is insisting to reside with him and lead marital life. At no point of time, she tried to reside with him.



Under these circumstances, it appears that there is irretrievable breakdown of marital relationship between them. It appears, both of them are not in a position to see face to face and trust each other, apart from residing together. Therefore, it is a fit case to grant decree of divorce.

10. As a counter blast, wife has made a counter claim for restitution of conjugal rights. She lived about four to five years separately from her husband prior to filing of divorce petition by the husband and did not file any such application for restitution of conjugal rights. She has made allegations against him that he was ill-treating her and she was unable to sustain his torture and she could not live with him for a period of an year after marrying him. Under such circumstances, it is difficult to believe that her prayer is *bona fide*. The learned trial Judge did not consider it properly and erroneously granted the relief of restitution of conjugal rights, which needs interference by this Court.

Similarly, the learned trial Judge has not appreciated the evidence properly regarding desertion of husband by wife



without justifiable reasons and dismissed the claim of husband for divorce. Therefore, interference in the said findings is also required.

11. The husband himself offered that he would pay Rs.40 lakhs to Rs.45 lakhs as permanent alimony for the future of his wife. It appears, he had not paid full amount of maintenance awarded by the Family Court in O.S.No.198/2003, as per the decree passed in the said case. It appears, wife has no source of income and she is not employed. During the pendency of the case, as per the submission of learned counsel for the respondents, their son completed degree in Engineering and got an gainful employment. Therefore, question of awarding maintenance to him does not arise. Considering these facts and circumstances, reasonable amount of permanent alimony needs to be awarded to the wife towards permanent alimony.

12. For the aforesaid discussion, we proceed to pass the following :



ORDER

MFA.No.178/2018 is ***allowed in-part.***

The impugned judgment and decree dated 25.10.2017, passed by the learned II Addl. Principal Judge, Family Court, Bengaluru, in M.C.No.1560/2008 is partly allowed. The dismissal of the petition filed by the petitioner in M.C.No.1560/2008 for divorce on the ground of cruelty under Section 13(1) (i-a) of Hindu Marriage Act, 1955, is confirmed.

The rejection of divorce on the ground of desertion under Section 13(1) (i-b) of Hindu Marriage Act, 1955, is reversed. The marriage of petitioner – N .Ravi Kumar held with Smt.S.N.Lalitha on 15.05.2000 at Tumakuru is dissolved by decree of divorce on the ground of desertion under Section 13(1) (i-b) of Hindu Marriage Act, 1955.



The counter claim of wife for restitution of conjugal rights granted by the trial Court is set aside.

The appellant-petitioner is directed to pay permanent alimony of Rs.50 lakhs to petitioner No.1- Smt.S.N.Lalitha (it includes the maintenance awarded by the trial Court to plaintiff Nos.1 and 2 in O.S.No.198/2003). Accordingly, decree dated 25.10.2017, passed by the learned II Addl.Principal Judge, Family Court, Bengaluru, in O.S.No.198/2003 is modified.

The appellant shall deposit the said amount before the concerned Family Court within a period of three months from the date of receipt of copy of this judgment or deposit to the account of plaintiff No.1 – Smt.S.N.Lalitha if her account particulars are furnished within a period of two weeks to the appellant.

Accordingly, the appeal in MFA.No.179/2018 stands ***disposed of.***



The Registry is directed to send back the trial Court records along with copy of the judgment to the concerned trial Court without delay.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

bk/
List No.: 19 Sl No.: 4