



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF NOVEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

MISCELLANEOUS FIRST APPEAL No. 8779 OF 2018 (IDA)

BETWEEN:

1. MRS. PAVITHRA,
WIFE OF WILSON RAJAN,
D/O ARUNACHAM,
AGED ABOUT 31 YEARS,
RESIDENT OF No.50,
SOUPARNIKA EPF ENCLAVE,
HMT AUDITORIUM, JALAHALLI,
BANGALORE-560 013.

...APPELLANT

(BY SRI K. P. BHUVAN, ADVOCATE)

AND:

1. MR. WILSON RAJAN,
SON OF RAJA J.,
AGED ABOUT 33 YEARS,
RESIDENT AT No.98, 3RD CROSS,
SANJAY NAGAR, MARATHAHALLI,
BANGALORE-560 037.

...RESPONDENT

(BY SMT. MARYKALA A., ADVOCATE)

THIS MFA FILED UNDER SECTION 55 OF INDIAN
DIVORCE ACT, AGAINST THE JUDGMENT AND DECREE DATED
08/03/2018, PASSED IN M.C. No.4725/2014, ON THE FILE OF

Digitally signed
by VALLI
MARIMUTHU
Location: HIGH
COURT OF
KARNATAKA



THE IV ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, PARTLY ALLOWING THE PETITION FILED U/SECTION 10(ix), (x) OF THE DIVORCE ACT.

THIS APPEAL, COMING ON FOR 'DISMISSAL', THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

Heard learned counsel for the appellant. The parties may be referred to as per their ranks in the Family Court for sake of convenience.

2. This appeal has been filed seeking to challenge an order dated 08.03.2018 passed by the IV Additional Principal Judge, Family Court, Bengaluru in M.C. No.4725/2014, whereby the petition filed by the petitioner-respondent herein under Section 10(1)(ix), (x) of the Divorce Act, 1869¹ has been allowed and a decree of divorce granted. The parties were married on 14.05.2008 in Logos Assembly God of Church at Bengaluru as per Christian rites and customs prevailing in their

¹ Act of 1869



community. From their wedlock, a male child was born, who was aged five years at the time of filing of the petition. The respondent-appellant herein was suspicious in character and doubted the petitioner all the time. The respondent was more interested in staying at her parents' house than staying in the matrimonial house. She left the matrimonial home on 24.11.2011 stating that her parents were sick. Thereafter, she did not return to the matrimonial home. Despite efforts being made, the respondent did not return to her matrimonial home. Thereafter, the petition for divorce was filed.

3. A statement of objections was filed by the respondent in which the allegations made against her were denied. It was alleged that the petition was filed with a *mala fide* intention to marry another lady with whom the petitioner is having an illicit affair. Allegations of the petitioner being addicted to alcohol and neglecting to maintain the respondent and her minor son were made. Allegation was further made that she and her son were driven out of the matrimonial home by the petitioner. In the course of evidence, the petitioner examined himself as PW.1 and got marked 6 documents being



Exs.P1 to P6. The respondent examined herself as RW.1 and got marked one document as Ex.R1.

4. The following points were stated to have arisen for consideration.

"1. Whether the petitioner proves that the respondent deserted him for a continuous period of 2 years or more, immediately preceding the presentation of this petition?

2. Whether the petitioner proves that the respondent treated him with cruelty?

3. What order?"

5. The findings of the Court were as follows:

" 1. In the Affirmative.

2. In the Affirmative.

3. As per the final order"

6. The petition was filed in the Court of the Principal Judge, Family Court, Bangaluru on 10.11.2014. The Family Court noted that the parties were residing separately since 24.11.2011 and the minor child was residing with the respondent-mother. It was noted that the respondent did not appear for her cross-examination and thereby, the evidence led



by her was expunged by an order of 09.01.2018. It emanated from the cross-examination of PW.1 that the respondent suspected his fidelity and that the husband was having illicit relationship with one girl, who was named Bindu. It was noted that the respondent had not placed any material before the Court to prove that the petitioner was having illicit relationship with another girl. Just because a suggestion was posed by the respondent during the course of cross-examination of PW.1, that he was having illicit intimacy with another lady, was not found sufficient to believe her specific contention. It was noted that the petitioner had specifically referred to an incident that occurred on 22.11.2011. After the birth of the child, the respondent was demanding from him to set up a separate house. When he refused to set up a separate house, owing to his responsibility to maintain his aged father, she consumed poison. As a result of which, she was admitted to a hospital at Bengaluru on 20.11.2011. She was discharged on 22.11.2011. It was held that the respondent was pressurizing him to set up a separate house and the nature of her suicidal tendency did constitute mental cruelty to the husband. The incident that occurred on 20.11.2011 was not disputed by the respondent.



The trial Court noted that during the course of cross-examination of PW.1, a specific stand was taken by the wife that when the petitioner neglected to maintain her by providing basic needs, she was forced to consume poison. The Court observed that she could have approached the concerned under the provisions of the Protection of Women from Domestic Violence Act, 2005² or should have sought maintenance or even could have complained to the elders of the family, which was not done. She however made an attempt to take away her life. This was held to be cruelty towards the petitioner. It was further noted that the petitioner had responsibility of taking care of his aged father in the absence of any others to take care of his father. In such a situation, the demand made by the respondent to set up a separate house also constituted mental cruelty towards the petitioner. After considering a judgment of the Supreme Court in the case of **Narendra v. K. Meena (Civil Appeal No.3253/2008)**, the Family Court held that the conduct of the respondent-appellant herein amounted to cruelty. The admitted fact being that the parties to the petition were residing separately since 24.11.2011, which was two days

² PWDV Act, 2005



after her discharge from the hospital where she was hospitalised on 20.11.2011 for having consumed poison in her attempt to commit suicide, the burden was on the respondent to show that she had not withdrawn her company from the petitioner's. The conduct of the respondent leaving the matrimonial home by withdrawing her company from the petitioner showed that she intended to put a permanent end to cohabitation with the petitioner. Therefore, the Court was of the opinion that the respondent had left the company of the petitioner continuously for a period of more than two years prior to presentation of the petition, which is without any justifiable excuse.

7. The learned counsel for the appellant has argued that on several occasions, the respondent was present in Court for her cross-examination but her testimony was not recorded and therefore, for this reason alone the order of the Family Court deserves to be set aside.

8. We have perused the order sheet. Prior to the order of 04.04.2017, in which it was recorded that sufficient opportunity had been given to the respondent to subject herself



for cross-examination but no representation was made from the side of the respondent. Hence, the RW.1 was discharged and the respondent's side evidence was taken as 'nil'. Prior to that, the order sheet itself reflects that repeated time was granted to the RW.1 for cross-examination after the PW.1 was cross-examined in full on 29.04.2016. Even thereafter, an application was filed under Order XVIII Rule 17 of Code of Civil Procedure, 1908³ and the case was being listed for cross-examination of the RW.1 by orders of 16.11.2017, 08.12.2017 and 09.01.2018. On 07.02.2018, though both parties were initially present and the arguments of the petitioner were heard, the case was kept aside and was called again at 03.25 p.m. at which time the respondent was absent and there was no representation on her behalf. For arguments of respondent, 17.02.2018 was fixed. On 17.02.2018, the respondent did not appear and therefore, the case was posted for judgment on 08.03.2018.

9. In view of the aforesaid details mentioned in the order sheet of the Family Court, we find that the respondent-

³ CPC



appellant herein had been afforded adequate opportunity to submit herself for cross-examination, which she did not avail. We find from the record that the Family Court has considered meticulously the evidence available including the examination and the cross-examination of PW.1. The evidence on record supports the claim of the petitioner for divorce on the ground of desertion and cruelty. There is no merit in the appeal and it is therefore, dismissed.

All pending applications stand disposed of.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(K. V. ARAVIND)
JUDGE**

VBS
List No.: 1 Sl No.: 13