

THE HONOURABLE SRI JUSTICE L. NARASIMHA REDDY

and

THE HONOURABLE SRI JUSTICE S.V. BHATT

F.C.A.No.365 of 2012

JUDGMENT: - (*Per the Hon'ble Sri Justice L. Narasimha Reddy*)

The appellant is the husband of the respondent. Their marriage took place on 26.01.1991. They were also blessed with two male children. On account of the differences that have arisen between them, several proceedings ensued. The appellant filed O.P.No.528 of 2008 in the Family Court, Ranga Reddy District at L.B. Nagar against the respondent under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short 'the Act'). By citing various reasons, which according to him constituted cruelty, the appellant prayed for a decree of divorce. The respondent entered appearance and filed counter. She opposed the O.P by denying the allegations. Through the order dated 21.11.2012 the trial Court granted a decree for judicial separation. The appellant feels aggrieved by the same and has filed the present appeal.

Smt S. Vani, the learned counsel for the appellant submits that the trial Court recorded a clear finding to the effect that various acts and omissions particularly, institution of innumerable cases against the appellant and his family members by the respondent by itself constitutes an act of cruelty, but still the relief of divorce was not granted. She submits that the respondent has gone to the extent of alleging illicit intimacy between the appellant and his neighbours and colleagues and though there is not even a ray of hope for the parties to live together, the trial Court made a vain attempt in passing the decree for judicial separation. The learned counsel further submits that the evidence on record discloses that the respondent made the life of the appellant miserable not only by spreading ugly canard but also approaching the offices wherever the appellant work. She further contends that there was not even an attempt by the respondent to join the appellant ever since the decree was passed and that itself is a

sufficient ground to pass a decree for divorce.

The respondent is served with notice, but there is no representation for her.

Incidentally, it needs to be observed that the respondent filed an independent appeal being F.C.A.No.411 of 2012 feeling aggrieved by the same decree and the appeal was dismissed for default today through a separate order.

The appellant made a detailed reference to the various acts and omissions on the part of the respondent ever since the marriage. The respondent however denied the same. The Trial Court framed only one point for consideration, namely, whether the petitioner (appellant) is entitled to the decree of divorce on the ground of cruelty?

To prove his case, the appellant deposed as P.W.1 and he examined P.W.2 an office colleague. He also filed Exs.P.1 to P.11, which are certified copies of the complaints submitted by the respondent and the judgments in certain cases through which the appellant was acquitted.

The respondent deposed as R.W.1, but she did not file any documentary evidence.

The cruelty is recognized as one of the grounds under the Act for granting a decree of divorce. The cruelty contemplated under Section 13 (1)(ia) of the Act need not be the one, which resulted in any bodily or manifested injuries. If one of the spouses is subjected to mental agony and misery to such an extent that it is no longer possible for her or him to continue with the marriage, it amounts to cruelty. In the recent past, the Supreme Court held that institution of numerous proceedings or filing of vexatious complaints would by itself constitute an act of cruelty.

The evidence on record in the instant case discloses that the respondent had subjected the appellant to cruelty in different ways. She suspected the character of the appellant and went to the extent of attributing infidelity with the office colleagues. P.W.2, who is a

colleague of the appellant in the office, deposed that the respondent has come to their office and she used filthy language not only against the appellant but also against the office colleagues. It was stated that the respondent used to exhibit anxiety to know the movements and whereabouts of the appellant suspecting his character even he went on official duties. It is also on record that the allegations of this nature were made against the appellant vis-à-vis the neighbourhood. So much so, they had to file a complaint against the respondent. The acts of cruelty on the part of the respondent are galore in the personal life between herself and the respondent.

Apart from the proved facts of cruelty referred to above, the trial Court recorded a finding to the effect that the respondent filed quite a large number of complaints, most of them are frivolous and that itself constituted an act of cruelty. Reference is made to various precedents of the Supreme Court.

The documentary evidence comprises of about half a dozen complaints submitted by the respondent against the appellant. It is brought to the notice of this Court that in most of the cases the appellant was acquitted. The act of the respondent in filing so many complaints not only against the appellant but also his family members by itself would constitute an act of cruelty. It is also brought to the notice of this Court that the respondent was so unkind and cruel to him that she has driven him away from the house, which belongs to him. Whatever may have been the justification for the trial Court in granting a decree for judicial separation, the subsequent events are absence of them. Creating any hope for reconciliation would make it clear that there is no point in continuing the matrimonial relations in such a condition.

We accordingly allow the appeal and the decree passed by the trial Court shall stand modified to the one of dissolution of marriage. There shall be no order as to costs.

The Miscellaneous Petitions filed in this revision shall stand disposed of.

L. NARASIMHA REDDY, J.

S.V. BHATT , J

Date: 04.06.2013
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