

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 482 OF 2011

VIVEK VIJAYKUMAR AYACHIT
VERSUS
ANJALI @ UMA VIVEK AYACHIT

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Advocate for Appellant : Shri R.P.Adgaonkar
Advocate for Respondent : Shri Amol. S.Sawant
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CORAM : RAVINDRA V. GHUGE, J.
Reserved on : March 17, 2015
Pronounced on : March 18, 2015
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ORDER :-

1. A marital discord between the petitioner / husband and the respondent / wife is the issue. The petitioner had preferred HMP No. 77 of 2005 before the learned III Joint Civil Judge (S.D.), Latur. By judgment and order dated 5.12.2008, the petition filed under Section 13(1)(i-a) of the Hindu Marriage Act was allowed and the prayer to grant divorce and put an end to the marriage was granted.

2. The only issue considered by the trial Court was as regards "mental cruelty".

3. The respondent preferred RCA No.8 of 2009 before the learned District Judge-III, Latur. By judgment and order dated 28.1.2011, the appeal was allowed and the impugned judgment dated 5.12.2008 was quashed and set aside and HMP No. 77 of 2005 was dismissed.

4. It is admitted that the issue of “desertion” has not been raised. It is also admitted that the issue of “the marriage having irretrievably broken down on account separation for more than ten years”, is also not raised.

5. The petitioner has canvassed that the substantial question of law is “as to whether a divorce can be granted if the marriage has irretrievably broken down ?” Reliance is placed upon the judgment of the Apex Court in the case of Naveen Kohli Vs. Neelu Kohli [AIR 2006 SC 675]. Contention is that the separation is of more than ten years as on date.

6. The Apex Court in the Naveen Kohli's judgment (supra), has considered the case of a marriage being irretrievably broken down in paragraph Nos. 61, 68, 69, 70, 80, 81 and 82 as follows:-

"61. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. Because of the change of circumstances and for covering a large number of cases where the marriages are virtually dead and unless this concept is pressed into services, the divorce cannot be granted. Ultimately, it is for the Legislature whether to include irretrievable breakdown of marriage as a ground of divorce or not but in our considered opinion the Legislature must consider irretrievable breakdown of marriage as a ground for grant of divorce under the Hindu Marriage Act, 1955.

68. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would

be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

69. *Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.*

70. *Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.*

80. *In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.*

81. *The High Court ought to have visualized that preservation of*

such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

82. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life."

7. The learned Division Bench of this Court in the case of V Versus N [2013 (6) Mh.L.J. 598] has considered the judgment of the Apex Court in the case of Naveen Kohli (supra) and has observed in paragraph No.20 that the statute does not permit a Court to dissolve the marriage on account of its "irretrievable breakdown". This may be done by the Supreme Court in exercise of its powers and jurisdiction under Article 142 of the Constitution of India and that is a jurisdiction exclusively vested in the Supreme Court.

8. It would be apposite to reproduce paragraph No.20 of the V Vs. N judgment (supra), as under:-

"20. Faced with this, Mrs. Mutalik urges us to follow the decisions of the Supreme Court in exercise an inherent power, ex debito justitiae, and dissolve the marriage on the grounds that it has irretrievably broken down following the decisions of the Supreme Court in Naveen Kohil v. Neelu Kohli : (2006) 4 SCC 558 and Durga Prasanna Tripathi v. Arundhati Tripathy : (2005) 7 SCC 353 Regrettable though it may be, we cannot do so. As a first Appellate

Court, we are not vested with plenary jurisdiction. We must decide, and decide only, within the parameters of what the statute permits. The statute does not permit a court to dissolve a marriage on account of its irretrievable breakdown. This may be done by the Supreme Court in exercise of its powers and jurisdiction under Article 142 of the Constitution of India, but that is a jurisdiction exclusively vested in the Supreme Court. [2006 (4) Mh.L.J.(SC) 242]. If V's actions or conduct caused the irretrievable breakdown of the marriage, then he cannot be allowed to seek dissolution on that ground.[2006 (1) Mh.L.J.(SC) 10]. Indeed, the Supreme Court itself has recently held that "irretrievable breakdown of marriage" is not a ground for divorce under the Hindu Marriage Act. It is a weighty circumstance, but one of many, that the court will take into account in deciding whether or not to order a severance of the marital tie; but this, too, is a power that only the Supreme Court can properly exercise under Article 142 of the Constitution of India [Anil Kumar Jain Vs. Maya Jain (2009) 10 SCC 415; Manish Goel Vs. Rohini Goel (2010) 4 SCC 393]. "

9. The Apex Court in the case of K. Srinivas Rao Vs. D.A.Deepa [(2013) 5 SCC 226], has held that irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act. This power can vest only in the Supreme Court under Article 142 of the Constitution of India.

10. In the light of the above, I do not find that the issue of irretrievable breakdown of marriage can be a substantial question of law as is canvassed by the appellant.

11. Having heard the learned Advocates for the respective sides and

having gone through the impugned judgments of the trial Court as well as the first appeal Court, the aspect as regards “cruelty” has been considered by the first appeal Court. Evidence adduced has been considered.

12. The fact that the respondent cohabited with the appellant and has given birth to a son namely Vijay, has been rightly appreciated by the appeal Court, which concluded that the differences between the two sides would not amount to “cruelty”.

13. In the light of the above, I do not find any substantial question of law in this Second Appeal and the same is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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