

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

Mat.Appeal.No. 319 of 2006 ()

O.P. NO.159/2005 OF FAMILY COURT, MANJERI.

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PETITIONER/RESPONDENT:

P. PANKAJAVALLI,
D/O.PADINHAREPURAKKAL NOTTAN VAIDYAR, 42 YEARS,
TEACHER, PALAMAD S.V. HIGHER SECONDARY SCHOOL,
PANKAJA NIVAS HOUSE, PATHIRIYAL P.O., VIA. MANJERI,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN.

RESPONDENT/PETITIONER:

BALAKRISHNAN. A.,
S/O.AMARAMBALAVAN VELU, 44 YEARS, TEACHER,
MUTHEDAM GOVERNMENT HIGHER SECONDARY SCHOOL,
RAJANI NILAYAM, AMARAMBALAM P.O., NILAMBUR TALUK,
MALAPPURAM DISTRICT.

R1 BY ADVS. DR.K.P.SATHEESAN,
SRI.K.K.GOPINATHAN NAIR,
SMT.C.V.RAJALAKSHMI,
SMT.P.K.VALSALA.

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD
ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

rs.

V.K. MOHANAN & P.D. RAJAN, JJ.

Mat.Appeal No. 319 of 2006

Dated this the 9th day of January, 2015

JUDGMENT

P.D.Rajan, J.

This appeal is preferred against the judgment in O.P.No.159/2005 of Family Court, Manjeri by the wife. The above petition was filed by the husband for divorce under Section 13 (1a) of the Hindu Marriage Act against his wife. The appellant is the wife and the respondent is the husband in this appeal.

2. Brief facts are as follows: The marriage between the appellant and the respondent was solemnized on 28-5-1990 as per customary rites and two male children were born in the wedlock. Both parties are working as teachers and in the year 1996, they purchased 10 cents of land in their name

and in the year 1998, they started construction of a house in this property. For this purpose, they had availed a loan of ₹1 $\frac{1}{2}$ lakhs in 1998 and ₹1 lakh in 1999. The respondent-husband had availed other loans also for construction of the house. The appellant-wife did not co-operate with the husband for the construction of the house. She found fault with the above act of the husband. Subsequently, the relationship became strained and the wife ill-treated the husband physically and mentally. While continuing this ill-treatment, the husband filed O.P.No.477/2003 before the Family Court, Manjeri for judicial separation. Subsequently, the matter was settled between them. After taking the aforesaid housing loan, the husband paid the loan amount and continued to bear the household expenses. The husband alleged that the wife behaved

cruelly towards him. Several petitions were filed before the Police Station. Finally, the husband preferred the above petition.

3. In the trial Court, the wife contended that there was no ill-treatment from her side, while residing together as wife and husband. She never found any fault with her husband for the construction of the house. The above O.P.No.477/2003 was filed before the Family Court, Manjeri only to get rid of the wife, but the dispute was settled on the basis of an agreement. After that, they were residing together as husband and wife. Thereafter, the husband committed breach of the agreement and behaved cruelly towards her and children. The husband had taken away the younger child from the school on 30.3.2005 without informing the wife. Moreover,

on 31.3.2005, he had removed all household articles from the house, which are jointly belonging to the appellant and the respondent. According to her, there was no mental or physical harassment from her side and there is no ground to allow any relief in the above petition.

4. Both parties adduced oral and documentary evidence in the trial Court. The oral evidence consists of oral testimony of PWs 1 to 4 and RW1 and documentary evidence consists of Exts.A1 to A4. The trial Court, after analysing the oral and documentary evidence, dissolved the marriage between the petitioner and respondent under Section 13(1a) of the Hindu Marriage Act. Aggrieved by that, the wife preferred this appeal.

5. The learned counsel appearing for the appellant contended that prima facie no materials are produced

before the trial Court to prove the alleged cruelty. The ground of cruelty is not properly proved and alleged in the petition. When there is no oral or documentary evidence adduced by the petitioner in the trial Court, there is no reason to grant a divorce on the ground of cruelty. The learned counsel submits that the even though the relationship between the appellant and the respondent was irretrievably broken down, that is not a ground for granting divorce under Section 13(1a) of the Hindu Marriage Act. He relied the decision reported in Jayachandra v. Aneel Kaur [2005(1) KLT 26(SC)], Kameswara Rao v. Jabilli [2002(1)KLT SN 68 (caseNo.84)] and Shyam Sunder Kohli v. Sushma Kohli @ Satya Devi [(2004) 7 SCC 747]. There was no argument from the side of the respondent.

6. According to Section 13(1) (1a) of the Hindu Marriage Act the parties can file a petition for dissolving the marriage by a decree of divorce on the ground that after solemnization of marriage, the other party treated the petitioner with cruelty. The expression 'cruelty' is not defined specifically in the Act. The cruelty can be either physical or mental. When cruelty is properly proved in a Court of justice, the petitioner is entitled to get a decree of divorce on that ground. The specific allegation of the respondent was that the wife illtreated him both physically and mentally after their marriage. To substantiate that contention, the respondent-husband was examined as PW1 in the trial Court. Even though many allegations were levelled against the appellant, no reliable evidence with regard to such conduct of the appellant was

also proved in the trial Court. PW1 also stated that he knew about her mental illness at the time of marriage. According to PW1, the husband, the wife was suffering from some mental illness and for that, she was admitted in the hospital. But, he did not adduce any evidence with regard to that ailment. On a perusal of the oral evidence adduced, it is clear that the respondent-wife alleged illicit relationship of the petitioner-husband with other woman. The petitioner-husband contended that the wife threatened him to cut off his genital organ. She also alleged extra marital relationship of the husband to his colleagues. Even though the aforesaid averments were alleged in the petition, no evidence has been adduced in the trial Court. The appellant wife was examined as RW1, who totally denied the allegation and contended that all quarrel

between the petitioner and the respondent was with regard to the payment of instalment of the loan amount for the construction of the house only. According to her, she spent huge amount from her salary to repay the loan amount also.

7. Analysing the above oral and documentary evidence of PW1 and RW1, it is found that there was no specific finding with regard to the alleged cruelty. PW2 and PW3 are the colleagues of PW1. They have no direct knowledge with regard to the alleged cruelty. They also admitted that there was some financial debt of the appellant and the respondent and the loan repayment was made by PW1. PW3, who is a neighbour of PW1, deposed that dispute between the the appellant and the respondent was with regard to the repayment of loan amount alone.

8. Going through the evidence of these witnesses, it is seen that the dispute between the petitioner and the respondent is only an ordinary tear and wear in a married life. Probably, they have tried to settle the matter in the presence of mediators. But, after violating the conditions entered between them in the compromise, they again started such quarrel. Those findings are not sufficient to grant a decree of divorce on the ground of cruelty after condonation. Therefore, the alleged cruelty is not proved in this case.

9. In this backdrop, we have considered whether a divorce can be granted to the petitioner on the ground of 'irretrievably broken down' of marriage. Apex Court in Shyam Sunder Kohli 's case (supra) held as follows:

"On the ground of irretrievable break down of marriage, the court must not lightly dissolve a marriage. It is only in extreme circumstances

that the court may use this ground for dissolving a marriage. In this case, the respondent, at all stages and even before us, has been ready to go back to the appellant. It is the appellant who has refused to take the respondent back. The appellant has made baseless allegations against the respondent. He even went to the extent of filing a complaint of bigamy, under Section 494, IPC, against the respondent. That complaint came to be dismissed. As stated above, the evidence shows that the respondent was forced to leave the matrimonial home. It is the appellant who has been at fault. It can hardly lie in the mouth of a party who has been at fault and who has not allowed the marriage to work to claim that the marriage should be dissolved on the ground of irretrievable break down. We, thus, see no substance in this contention.

10. The ground of irretrievably broken down of marriage is not a ground under Section 13 (1a) of the Hindu Marriage Act. While considering the above aspect, the Court must not lightly dissolve the marriage. Such extreme circumstances are not found in this case and therefore, observation of the trial Court with regard to that point is not correct. The marital relationship between

the appellant and the respondent is irretrievably broken down is not a ground to grant relief u/s.13(1a) of the Hindu Marriage Act. Therefore, we find that when alleged cruelty is not properly explained and proved in the trial Court, the husband is not entitled for a decree of divorce u/s.13(1a). Therefore, the judgment and decree passed by the trial Court under Section 13(1a) is to be set aside. Hence, we set aside the judgment of the Family Court, Manjeri and this appeal is allowed.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

acd

