

HONOURABLE SRI JUSTICE R.SUBHASH REDDY

AND

HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.M.A.No.3 of 2005

JUDGMENT (Per Hon'ble Dr.Justice B.Siva Sankara Rao)

This is an appeal maintained under Section 28 of the Hindu Marriage Act, 1955 by the unsuccessful petitioner-husband in H.M.O.P.No.90 of 2002 on the file of the Senior Civil Judge, Vizianagaram, against the dismissal order dated 19.10.2004 on his application to dissolve the marriage with respondent-wife, dated 18.08.1996 under Section 13(1)(ib) of the Hindu Marriage Act.

2. The averments in H.M.O.P.No.90 of 2002 on the file of the Senior Civil Judge's Court, Vizianagaram, were that their marriage dated 18.08.1996 was performed at Visakhapatnam and after marriage both of them lived together and lead a happy marital life till 25.01.1997 and himself and his family members treated the respondent with utmost care and love, that on 26.01.1997 at about 6 P.M., the respondent's mother by name Bhanumati (Sic-Kamalavathi) and Maternal uncle Lakshman Rao (Sic-Lakshman Murthy) came to the house of the petitioner stating that the father of the respondent fell ill and he wanted to see the respondent, that since it was night time, the petitioner advised them to take the petitioner on the next day but on insistence he sent the respondent along with them and since then she did not return, that the respondent did not even show any interest in accompanying with the petitioner and his family members to the kalyanam programme on 09.02.21997 at Tirupati though having knowledge about the programme and booking of train tickets, that again the petitioner requested the respondent to come to his house and he also requested her parents to send her back but all of them bluntly refused his request and even the effort of the petitioner requesting Ramanuja kutam also went in vain, that the father of the respondent threatened the petitioner that if he visits to Visakhapatnam again, they would beat him and make disabled person, that on 14.10.2002 the persons of respondent's father, at Visakhapatnam railway station while the petitioner was about to proceed to University, came to him and threatened him saying that he would meet the father of the respondent along

with share of his properties by severing his connection with his family, otherwise, they would see his end, thus there is desertion for about 6 years by the respondent without any reason and hence grant decree of divorce.

3. The respondent-wife, while denying and disputing the petition averments (supra), contended in her counter that the petitioner, his parents, younger brother and sister, since one month, after marriage started harassing one way or other, including by removal of servant-maid, making liable the respondent to attend entire household work and despite attending by not allowing to do fully and with additional dowry demands by cash and motor cycle and were also insulting by putting questions as to how many lovers she was having. Her further contest is that they were threatening on her life to show as stove accident or accidental fall into well and demanding to sign on papers to give divorce and for refusal, ultimately necked her out of the house on 23.02.1997. Though through elders parents and uncle she came to join her husband, she was not allowed and even the wife of petitioner's younger brother was subjected to cruelty that led to police complaint and that the petitioner is not entitled to divorce for no fault of the respondent and thereby sought for dismissal of the claim.

4. From the pleadings and after enquiry and hearing with reference to the evidence on record of Ex.A.1 letter dated 26.01.1997 with P.Ws.1 to 3 and R.Ws.1 to 3, the trial Court held in dismissing the divorce claim as not proved.

5. The contentions in the grounds of appeal as well as the over submissions of the counsel for the petitioner-appellant-husband are that the evidence on record when clearly establishes entitlement to divorce on ground of desertion, the trial Court went wrong in dismissal of the petitioner's claim and hence to dissolve the marriage allowing the appeal.

6. The learned counsel for the respondent sought dismissal of the appeal for no grounds to interfere with the lower Court dismissal order.

7. Perused the material on record. The parties hereinafter are being referred to as they are arrayed before the Court below for sake of convenience.

8. Now the points that arise for consideration are:-

1. Whether the dismissal of the petition (H.M.O.P.No.90 of 2002)

filed by the petitioner/appellant to dissolve his marriage dated 18.08.1996 with the respondent-wife, is unsustainable and requires interference by this Court while sitting in appeal, if so, with what observations and conclusions?

2. To what relief?

Point No.1:

9. The divorce petition is filed on the ground of desertion attributed against his wife. From the evidence on record covered by P.Ws.1 to 3 with reference to Ex.A.1 letter dated 26.01.1997 and of R.Ws.1 to 3, what P.W.3 deposed in his cross-examination is that he had not gone to the house of the parents-in-law of the petitioner/husband, to mediate and not even contacted any caste elders and not even questioned the petitioner as to at any time earlier he made efforts for mediation and its result. In his saying in August, 2001, he went to the house of petitioner in-law's and only had a talk with the father-in-law of the petitioner and not even asked the respondent to know any dispute much less advised the petitioner to give any notice and he is not even their caste elder and not even belong to Ramanuja Kutam and thus even, to support the version of petitioner and his father P.W.2 of they approached said Kutami for reconciliation. They did not examine any witness, much less to say respondent expressed any unwillingness to join the petitioner. Apart from it, the evidence of R.Ws.2 and 3 belies said contention of the petitioner of respondent not willing to join the petitioner. In fact, P.W.3 also deposed that the respondent is expressing her willingness to come and join the petitioner, but it is the petitioner that refused to allow her, to say it is he that deserted her therefrom. R.W.1 deposed that there is no fault of her and of his family members and she was not allowed by the petitioner and his family members to enter the matrimonial home even in the efforts through her parents, uncle and elders. Thus, there is nothing to show there is any intention on the part of the respondent/wife to put an end to the marital tie to constitute desertion on her part, much less with such animus for a period of more than two years to consider the relief on that ground as rightly concluded by the trial Court at para-8 of the order by reproducing contents at para-28 of the expression of the Apex Court in **Vegi Jagadesh Kumar vs V. Radhika** regarding the principle with reference to the facts. The trial Court in fact by scanning the evidence in this regard by appreciation of the facts and law when came to the right conclusion of there is no desertion of petitioner by

respondent and he cannot take advantage of his fault, for this Court while sitting in appeal, there is nothing to interfere. Accordingly, Point No.1 is answered.

Point No.2:

10. In the result, the appeal is dismissed with no costs. Consequently, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

JUSTICE R.SUBHASH REDDY

Dr. JUSTICE B. SIVA SANKARA RAO

Date: 02.04.2015

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