

**HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO**

CIVIL MISCELLANEOUS APPEAL No.4699 of 2004

JUDGMENT : (per Hon'ble Sri Justice R.Subhash Reddy)

This appeal, under Section 28 of the Hindu Marriage Act, 1955 (for brevity "the Act") is filed by the appellant/husband aggrieved by the order and decree dated 22.06.2004 in O.P.No.186 of 2002 passed by the Additional Senior Civil Judge, Ranga Reddy District, L.B. Nagar, Hyderabad, dismissing the petition filed by him against the respondent/wife under Section 13 (1) (ia) of the Act, seeking to grant a decree of divorce on the ground of cruelty.

2. The appellant and respondent are petitioner and respondent in O.P.No.186 of 2002. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in the O.P., before the Court below.

3. The petitioner has filed the aforesaid O.P., alleging that the marriage between himself and the respondent was performed on 4.12.1997 at King Kothi, Hyderabad, and the marriage was consummated. It is averred that at the time of marriage, the petitioner was employed in the State of Gujarat and soon after the marriage, the respondent joined the petitioner at Bharuch in Gujarat State and they lead a happy marital life till June, 1999 and they were blessed with a female child on

19.9.1998. It is alleged that in the month of June, 1999 when the petitioner and respondent were shifted to Hyderabad and settled at Vanasthalipuram, the respondent has completely changed her attitude due to ill-advice of her parents and she started quarrelling on petty issues and created nuisance, causing mental harassment to him. It is alleged that after returning from Gujarat, he had acquired employment in Turbo Machinery Group of Industries in the month of September, 1999. Even before that, the respondent went to her parents house on 24.7.1999 stating that she would return in a day or two, but returned only in the last week of December, 1999. It is further alleged that the respondent again left the matrimonial home on 11.10.2000 along with the baby without his knowledge and consent and ever since she is staying at her parents house. It is alleged that in spite of repeated requests by the petitioner, the respondent did not join the petitioner and on 3.7.2001, the respondent came to the petitioner's house along with two Police Constables and took away her certificates. It is also alleged that though he got issued a notice dated 21.7.2001 calling upon her to join the matrimonial home, she sent a reply notice dated 26.7.2001 making all false and frivolous allegations, which amounts to cruelty. Thereafter, it is alleged that the respondent got issued notices dated 13.9.2001 and 11.10.2001 asking the petitioner to send the details of separate premises

obtained by him to enable her to join the matrimonial home. Though the petitioner got issued a reply notice dated 21.10.2001 informing her that first floor has been constructed at Hill Colony, Vanasthalipuram, for their stay and inspite of several requests made by the petitioner, the respondent did not join him. Thus, pleading that all such acts of the respondent in not joining the petitioner and also coming to the house of the petitioner along with Police Constables to take the certificates and insisting him to put up a separate family as a condition precedent for joining his company will constitute cruelty and hence sought to grant a decree of divorce.

4. The respondent/wife filed counter affidavit denying various allegations made by the petitioner/husband. It is stated that the petitioner left his job at Gujarat and opted to shift to Hyderabad against the wishes of his parents. It is stated that as the petitioner was jobless, he started grouching against her and harassed her mentally on trivial matters. It is also stated that as the petitioner was harsh in his attitude, she was forced to join her parents on 24.7.1999 along with the child and subsequently as the petitioner had promised the parents of the respondent that he would not hurt the feelings of the respondent and look after her well, she along with child was sent by her parents to the house of the respondent on 25.12.1999 and till 11.10.2000 she stayed along with the petitioner. It is further stated that due to the cruel

attitude of the parents and other family members of the petitioner, as the situation was worsening, having no other alternative, she came back to her parents house informing the petitioner that she would rejoin him on a condition that he stays away from the locality of his parents. It is further stated that after the marriage, the petitioner started harassing her, forcing her to demand partition of the property of her father and get it registered in her name and, as she was against it, the petitioner put her to mental torture and threatened her that she would be sent out of the matrimonial house till registration of the property in her name. It is stated that though she is a Post Graduate and pursuing research in the final stages of III Year, she has left her Ph.D., after the marriage because of the attitude of the petitioner and his family members. It is further stated that there is no fault on her part and justifying her demand to set up a separately family away from the parents of the petitioner, she sought for dismissal of the petition.

5. Before the Court below, the petitioner himself was examined as P.W.1 and no documents were marked. In defence, the respondent herself was examined as R.W.1 and marked Exs.B.1 to B.12. The Court below, having considered the oral and documentary evidence on record, through the impugned order dated 22.6.2004, dismissed the O.P., on the ground that no specific instance, which constitute cruelty, is shown by the petitioner so as to grant the decree of divorce. Hence, the present appeal.

6. Sri J. Ugra Narasimha, learned counsel for the appellant-husband contended that inspite of repeated requests made by the appellant/husband, orally and also through written notices, as the respondent/wife has refused to join him and insisted to put up a separate family away from his parents, the same will constitute cruelty within the meaning of Section 13(1)(ia) of the Act and, as such, the appellant/husband is entitled for a decree of divorce.

7. On the other hand, Sri V. Atchutaram, learned counsel for the respondent/wife contended that as the respondent was harassed by the parents and other family members of the appellant in his absence, she was constrained to insist the appellant to put up a separate house and hence, the same cannot be construed as cruelty.

8. Having heard learned counsel for the parties, we have perused the impugned order and the material on record.

9. From a perusal of the impugned order dated 22.6.2004 and the evidence on record, it is clear that after the marriage, the respondent joined the petitioner at Bharuch in Gujarat State and they lived happily till June, 1999 and were blessed with a female child on 19.9.1998. Thereafter, in June, 1999 they were shifted to Hyderabad and settled at Vanasthalipuram, and the petitioner also had acquired employment in Turbo Machinery Group of

Industries in September, 1999. It is the case of the petitioner that the respondent left his company on 24.7.1999 and returned only in the last week of December, 1999. The respondent again left the matrimonial home on 11.10.2000 along with the baby without knowledge and consent of the petitioner and staying at her parents house only. On the other hand, it is the case of the respondent that due to the harassment of the parents of the petitioner and other family members in his absence, she left the company of the petitioner and staying at her parents house. The same is also evident from Ex.B.1 reply notice dated 21.7.2001, wherein it was specifically pleaded that if the petitioner secures an alternative accommodation away from his parents, she is willing to join him.

10. It is to be seen that the only ground on which the petitioner is seeking divorce is cruelty by the respondent. Whether the acts of the respondent in not joining the petitioner will really constitute cruelty is the only question, which fall for consideration in this appeal.

11. The respondent in her evidence as R.W.1 has deposed in clear terms that only due to the harassment by the parents of the petitioner, she was insisting the petitioner to put up a separate family and as the petitioner did not heed to her request, she left the company of the petitioner and staying along with her parents. It is to be noticed that after the marriage, the respondent joined the

petitioner at Gujarath and both of them lead happily marital life and they were blessed with a female child also on 19.9.1998. Even after their shifting from Gujarat to Hyderabad, the respondent stayed with the petitioner for some time and thereafter on 11.10.2000 only she left the company of the petitioner along with the child and staying at her parents house.

12. It is true that refusal by respondent to join the company of the petitioner, thereby depriving him of the conjugal society, would amount to cruelty. However, it is clear from the evidence on record that due to the harassment by the parents and other family members of the petitioner, the respondent left the company of the petitioner and insisted him to put up a separate family away from his parents. Therefore, merely because the respondent has insisted to obtain a separate house away from the parents of petitioner, that by itself cannot be construed as cruelty so as to grant a decree of divorce, more particularly, when both of them lived happily during their stay in Gujarat and even after they were shifted to Hyderabad, they lived together for various spells. Therefore, in the absence of any cogent evidence on record to prove the allegation of cruelty, we do not find any ground to interfere with the impugned order.

13. For the aforesaid reasons, this appeal is devoid of merits and is accordingly dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand

closed. No order as to costs.

REDDY

JUSTICE R. SUBHASH

RAO

04.03.2015.

Msr

Dr. JUSTICE B.SIVA SANKARA

HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL No.4699 of 2004

04.03.2015
Msr