

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

C.M.A.No. 57 of 2004

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JUDGMENT: (Per Dr.Justice B.Siva Sankara Rao)

This is an appeal filed under Section 19 of the Family Courts Act by the husband against the wife having been unsuccessful in O.P. No.133 of 2002 on the file of Judge, Family Court, Secunderabad, impugning the order dismissing the divorce application filed by him to dissolve the marriage with the respondent dated 10.02.1999 on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act. The contentions in the grounds of appeal as well as oral submissions in the course of hearing on behalf of the appellant husband are that the trial Court's dismissal order is contrary to law, weight of evidence, probabilities of the case, ill-appreciation of the facts and law, that the trial Court should have seen that, after the marriage dated 10.02.1999 they blessed with a female child on 20.12.1999 and thereafter, even there was no change in the attitude of the respondent-wife, who started harassing and ill-treating right from the day of the marriage and with new born child left his company to her parents against his will which the trial Court failed to appreciate in a proper manner, that the trial Court should have seen that the respondent ill-treated the petitioner and his younger brother and sister and parents even, that the trial Court also erred in holding that the appellant-petitioner failed to discharge

the burden of establishing the cruelty meted by him in the hands of respondent without proper appreciation, that the trial Court should have seen that the version of respondent as if with permission of petitioner, she left his company is unsustainable and baseless hence to dissolve the marital tie as the respondent is guilty of cruelty by setting aside the dismissal order of the lower Court and by allowing the appeal.

2) Whereas, it is the contention of the counsel for the respondent-wife that the impugned order of the lower Court is well considered and reasoned one and for this Court while sitting in appeal there is nothing to interfere, hence to dismiss the appeal.

3) Heard the learned counsel for both the parties and perused the material on record. The parties are being hereinafter called as they are arrayed in the trial Court for the sake of convenience.

4) Now, the points that arise for consideration are:

- i) Whether the respondent-wife is guilty of cruelty towards the petitioner-husband and if so, he is entitled to dissolve the marital tie between them dated 10.02.1999 and if so, the trial Court went wrong in dismissing the application and it requires interference by this Court while sitting in appeal and if so with what observations?
- ii) To what result?

POINT No.i:

5) There is no dispute on the factum of the marriage between the petitioner and respondent was performed on 10.02.1999 under Hindu Marriage custom and was

consummated and they lived together and in their wedlock, they blessed with a female child Sravika on 20.12.1999. The divorce O.P filed was in the year 2002 and prior to that the petitioner cause issued legal notice covered by Ex.R-1 dated 18.04.2002 through his advocate. The notice reads that the post marital life between the couple is with reluctance towards the petitioner-husband by the respondent-wife, by her failure to perform the duties as Hindu wife and in making his life unbearable with inhuman tendencies which he was bearing with hoping for the good in her attitude and in that mechanical conjugal life they blessed with a female child and even he expected a change after birth of the child in her, it was fruitless and she deserted him having left his company with the child to her parents house and started residing there and on umpteen of occasions he was postulated and bullied by her relatives at her parents house, whenever he approached her there with a request to join, that he is the only son to his aged parents who are depending on him and of whom she was inimically disposing even while staying with and ultimately on the birth anniversary of the child she came with a pretence to join but with malafide intention having raised an altercation with a demand to desert his parents and restart marital life, away to them and for his unheeding the illegitimate demand, she left his company with the child and failed to return and the marriage has been broken down irretrievably, hence with a request to join him within 10 days for not justified in her withdrawal of his company for marital life or else to take legal recourse. Ex.B-2 is the reply of her to the said notice, that was

issued on 03.05.2002 through her advocate stating that from the day of marital life she was ill-treated by him and his parents including his younger brother, sister and near and dear, that he is a man of inferiority complex and suspicious and not even allowing her to go out including to her parents house, in spite of she was attending all domestic work and by serving all of them, that his parents used to make complaints against her alleging she was not coming out of the bed room and not doing any household work and claiming as not interested in conjugal life with him and the contra allegations save those denied by her specifically are all false. It is her contention that his younger brother used to comment her as if her character is not good and one of his sisters who had love marriage and left her husband and staying in the house was spoiling the mind of him to give divorce to her, that in May, 1999; the senior paternal uncle of respondent died and in that connection, the petitioner, respondent and others went to Malkajigiri, and there his mother complained against her as if she was not looking after her comforts; that despite she was carrying by then and even doctors advised her for bed rest, she was forced to attend the household work during her pregnancy, and she was putting up all the physical and mental tortures hoping for good and his mother used to abuse her saying she has to stay like a creature under her chappals and she was even spoiling the mind of him from which he was abusing and ill-treating her. She further averred that while she was carrying, she was not even allowed to eat food properly till completion of their lunch to have any intake and on 10.02.2000 the date of their

marriage anniversary, she was abused by him and three months after delivery of the child without even permitting her health to attend all the household work, she was forcibly brought to his house with the child and forced to attend the household works by abusing, insulting and ill-treating her day in and day out, that on 21.04.2001, she was beaten by him at the instigation of his family members in particular by his mother and he did not even heed her request to have a separate residence for purchase of peace and by suppressing all the true facts, he want to found her fault in the notice with no truth.

6) Even coming to the petition averments of whom there are no any specific instances of what acts of the respondent-wife that constitutes cruelty so also from the evidence of him as P.W-1 and the respondent even after filing of the petition and in her counter expressed her readiness and willingness to join saying she was forced to stay away for her no fault and she was requesting to take her to his fold by setting up a separate residence, she was unheeding. On behalf of the respondent, besides Exs.R-1 and R-2 notice and reply and herself as R.W-1 three more witnesses she cause examined, who in one voice categorically deposed that it is the respondent that suffered cruelty in the hands of the petitioner-husband, his mother in particular, besides other family members, including sister and younger brother of him. It is from said evidence on record, the trial Court held that the petitioner-husband from said evidence could not make out any case on the ground of his wife-respondent is guilty of cruelty. Even for this Court while sitting in appeal against the impugned order, practically

there is nothing to interfere, as no specific acts of cruelty with any specific instances he could make out and any ordinary wear and tear cannot be considered as any act of cruelty.

Even his Ex.R-1 notice he cause issued to her is mainly with a version as if she is guilty of desertion, with vague averments as if her behaviour towards him is unbecoming. In the reply also, she expressed her willingness to join, despite she suffered cruelty in the matrimonial home at joint family, with a request to set up separate house. Thereby even from re-appreciation of all the evidence supra, there is nothing to interfere with the dismissal order of the lower Court. Accordingly, point No.i for consideration is answered.

POINT No.ii:

7) In the result, the appeal is dismissed. No order as to costs. It is left open to the respondent-wife to make any separate claim for maintenance including medical expenses etc., to her and to her daughter. As a sequel, miscellaneous petitions if any pending shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA

RAO
March 04, 2015
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