

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

F.C.A.No.116 of 2006

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

This is an appeal filed by the husband, who was unsuccessful in getting a decree of divorce before the trial Court vide dismissal order dated 15.05.2006 based on the petition filed under Section 13(1)(ia) of Hindu Marriage Act, 1955 against his wife seeking divorce on the ground of cruelty before the learned Judge, Family Court, Tirupati in H.M.O.P. No.91 of 2002.

2) The facts in brief from the material on record are as follows:

a) The petitioner averred in his petition for divorce that they lived happily for about six months after the marriage, that as respondent has been creating troubles in the joint family of the petitioner, and his brothers to live separately, the petitioner's brothers have separated themselves from the family, but for mother of petitioner staying with him, being a cardiac patient, that even after such separation of his brothers, the attitude of respondent did not change and she was creating all sorts of things in the family in order to sent out the petitioner's mother and to bring her parents and maternal uncle along with their followers to the house, that the respondent even threatened the petitioner and his mother to do away with, being Kadapa people saying they can throw bombs, that whenever the relatives of petitioner came to his house, the

respondent began to quarrel with them and hate them, besides abusing the petitioner before them by creating scenes to attract attention of neighbours and threatening to implicate, that she used to treat the petitioner with utmost contempt and often used to say that she married him out of sympathy of he is a physically handicapped person, that the respondent failed to fulfil the marital obligations, that she also failed to cook food and serve him for the last two years, that she neglected to provide basic needs of the petitioner, that the petitioner is in the habit of going to temples on every day and used to perform Abhishekam and in order to harass the petitioner she used to spoil the milk and curd and threw the flowers causing mental agony by even not caring his several requests not to do such acts, that the conduct of the respondent became bad to worse and she began to abuse the petitioner and beat him, that the respondent's repeated acts of violence against the petitioner lead to apprehension of danger of life, limb of the petitioner, that the petitioner was suffering the mental agony and used to adjust with the respondent in order to safeguard the prestige of the family, that the petitioner has been working in the shop and whenever he comes late in the night after closing the shop, the respondent refused to open the doors and thereby the petitioner was forced to stay outside during nights, that the respondent became a night mare to the petitioner with only to extract money, that the respondent stopped talking to the petitioner for the last two years and whenever anything is needed she used to write on a paper and keep on the table and the petitioner has to do necessary things as per the slips, that though the respondent is living along with the petitioner in

the same roof, she failed to discharge marital obligations in utter disregard, that the respondent persistently made false accusations against the petitioner and caused mental agony, that she has no regard and sanctity for thali also and she has removed thali and threw it on the face of the petitioner, that the behaviour of respondent towards petitioner grew from bad to worse, that her actions and deeds are nothing but contemptuous towards the petitioner, that her refusal to share the bed with the petitioner caused him frustration and misery, that the respondent's denial of normal marital life to the petitioner is reprehensible, that the petitioner informed all the acts of respondent to her parents and they took the respondent to her native village and stayed there for about two months and again her parents left her in the petitioner's house, that the attitude of respondent did not change and she continued to harass and defame the petitioner, that the respondent spoiled the domestic harmony and consequently the petitioner has been mentally upset, that the respondent has completely abandoned him, that her misconduct and offending talk in vulgar language became real impairment to his health, personal safety, mental happiness and reputation, that the petitioner apprehends danger in the hands of respondent as she is continuing her ill-treatment, that when all these facts were brought to the notice of parents of the respondent, they too joined hands with her and began to harass the petitioner, that she was demanding the petitioner to pay Rs.20,000/- to Rs.30,000/- etc., when the petitioner expressed his inability the respondent along with her parents used to torture him, that due to unbearable cruel treatment in the hands of the respondent,

the petitioner left the house and has been residing separately for the last three years apprehending danger to his life, that the respondent has been happily residing in the house and there is no chance of reunion as the respondent made the petitioner to leave the house by her words and conduct, that as the petitioner could not tolerate himself in public he was forced to leave the house on 04.07.2002 and left Tirupati for pilgrimage, that during his absence the respondent did not try to find out the whereabouts of the petitioner, that the petitioner came to know that his brother by name M.K.Ravichandra lodged a complaint before police stating that the petitioner was missing, that as there was no chance of reunion of petitioner and respondent he got issued a legal notice on 03.10.2002 to the respondent calling upon her to give consent for divorce within 10 days, that the respondent having received the notice did not comply and hence prayed to grant decree of divorce by dissolving their marriage.

b) The respondent, while denying the material allegations in the petition, contended that they lived happily for about two years, that the respondent came to know that the petitioner was addicted to alcohol and gambling, etc., that he used to come to house late in the nights, that whenever the respondent questioned the petitioner he used to beat her, that the family members of petitioner also encouraged him to abuse the respondent without any reason, that the respondent further submitted that when there are no children born to her through the petitioner for that also the petitioner used to blame her as if the defect lies in the respondent only, that at the instance of

parents of respondent and others, mediation was held in which both of them were advised to take better treatment from a doctor for getting children, that the respondent met the doctor and confirmed that there is no defect in her to give birth to children, but the petitioner refused to consult the doctor, that the petitioner used to pickup quarrels with the respondent for some reason or other and the respondent was tortured, that the respondent further submitted that the petitioner started demanding the respondent to give divorce so that the petitioner can go for second marriage, that when the respondent refused to give divorce, petitioner demanded Rs.2,00,000/- towards additional dowry, that when the respondent expressed her inability to bring the additional dowry, that the petitioner beat the respondent mercilessly for which the petitioner's relatives and family members supported, that the petitioner also planned to implicate the respondent in a criminal case which ultimately failed, that the attempts of petitioner to get divorce failed and so the petitioner got issued a legal notice with an intention to file petition for taking divorce, that the respondent got issued a reply notice to the petitioner on 28.10.2002 and the same was received by the petitioner's counsel, that it is only to harass the respondent and to throw blame on her, the petitioner has created false allegations for the purpose of taking divorce and hence prayed to dismiss the petition.

3) During the course of trial, the petitioner himself was examined as P.W-1 and also examined P.Ws 2 to 5 and marked Exs.A-1 to A-5. The respondent herself was examined as R.W-1 and also examined R.Ws 2 and 3 but no documents

were marked on her behalf. After perusal of above material on record and after hearing both sides, the learned Judge, Family Court, Tirupati dismissed the petition for no grounds to dissolve their marital tie.

4) The present appeal filed by the petitioner impugning the same is by contending that, the order and decree of the lower Court is contrary to law, weight of evidence and probabilities of the case, that the trial Court having found P.Ws 1 to 4 in one voice deposed of the respondent is quarrelsome in nature and used to harass the petitioner and expressed her desire to live separately and that on account of her attitude the brothers and mother of the petitioner are living separately; however, erred in holding that after such separation there is no need for the respondent to harass the petitioner, that the trial Court failed to appreciate the evidence in a correct perspective, that the harassment of the petitioner by the respondent is one issue and her intention to live separately is another issue and the former has nothing to do with the later and therefore the conclusion drawn by the trial Court is perverse, that the conclusion drawn by the trial Court of having married the disabled person the respondent cannot be said to have developed disliking towards the petitioner is highly presumptive, that the trial Court ought to have seen the family status of the petitioner and of the respondent's parents as the family of the petitioner is a famous business family in Tirupati and there is no need for them to demand any dowry, that the family of the respondent is not affluent and in financial problems and therefore there is no question of giving any

dowry, that the petitioner being rich, however is a disabled person, he married the respondent who belongs to a poor family with a fond hope that she would take care of him, that the trial Court has erroneously discarded the evidence of P.W-2 on the ground that he could not give the business details of the petitioner family, that the evidence of P.W-3 and P.W-4 is also discarded on the fallacious ground that they are related to him, that the trial Court failed to see that it is the relatives who will have an occasion to observe the behaviours and not the outsiders, that the trial Court has made an erroneous comment of not examined the neighbours by ignoring the fact that no outsider would come forward to give evidence in family matters, that the trial Court gave much credence to the evidence of P.W-3 of whom the respondent has not spoken to in her evidence, that he has no access to the petitioner's family and he is not even related, that the trial Court erred in holding that the petitioner wanted to implicate the respondent in a criminal case on purely surmises and conjectures, that the trial Court ought to have seen that unable to bear with the harassment, the petitioner in a vexed mood left the house and for all reasons the marital tie is to be dissolved.

5) The learned counsel for the appellant-petitioner-husband while reiterating the above, submitted that not preparing food, refusing conjugal life, beating and abusing the husband, not opening the doors for his entering into the house after the business hours and spoiling pooja material all are nothing but independent grounds of cruelty which made him unbearable to live with and thereby the appeal is to be allowed dissolving the

marital tie by setting aside the dismissal order of the trial Court and in support of that he placed reliance upon the instances what comes within the purview of cruelty to dissolve the marital tie mentioned by the apex Court in ***Samar Ghosh V. Jaya Ghosh***^[1].

6) In para No.101 at pages 546 and 547 of ***Samar Ghosh*** supra, the apex Court observed that.-

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour **which may be relevant** in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

- (i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.
- (ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.
- (iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.
- (iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.
- (v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.
- (vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded 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, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

7) Whereas, it is the contention of the learned counsel for the respondent-wife in support of the order of the learned

Judge, Family Court that the learned Judge, Family Court having fresh in mind the facts and recorded the evidence and appreciated in correct perspective after elaborate hearing and by discussion on the material aspects so minutely in arriving a conclusion of the petitioner-husband is at fault and he cannot take advantage of his own fault and there is no fault of the respondent-wife muchless any acts of cruelty or desertion and there is no irretrievable break down of the marital life muchless alleged acts to constitute cruelty from any of them to put an end to the marital tie and the very expression in **Samar Ghosh** supra, it is clearly laid down several expressions that each case depends on own facts to appreciate vide **Gurubaksh Singh V. Harminder Kaur**^[2] and the instances quoted are only illustrative to examine in the touchstone of facts of each case and thereby for this Court while sitting in appeal, there is nothing to interfere but for dismissal. The counsel drawn attention of the Court from the material in support of his conclusion including with reference to the trial Court judgment observations in para Nos.22, 25 and 29 as well as evidence of R.W-1 at para No.6 apart from the other evidence among P.Ws 1 to 5 and also with reference to evidence of R.Ws 2 and 3.

8) Heard, at length, both parties and perused the entire material on record. For the sake of convenience, the parties are being referred to as they are arrayed before the trial Court as petitioner-husband and respondent-wife.

9) Now, the points that arise for consideration are.-

- i) Whether the respondent-wife is guilty of cruelty and/or desertion and whether there is any acts of

cruelty resulting in break down of the marital tie irretrievably even otherwise and if so, the impugned order of the trial Court dismissing the divorce claim on the grounds of desertion and cruelty is unsustainable and requires interference by this Court while sitting in appeal and if so, with what observations?

ii) To what result?

POINT No.i:-

10) The marital relationship between the parties vide marriage dated 29.08.1998 at Tirupati and under Hindu Law and the marriage even consummated with no issues in their wedlock and the petitioner is a physically challenged and is doing business by running a shop and owning a house wherein the respondent for his residing away to her since before filing of the divorce O.P. No.91 of 2002 is not of much in dispute. So far as desertion concerned, it is not his case that by any notice he invited her to join him at any different place, where he resides muchless that she left to her parents and residing away as his very evidence and also with reference to Ex.A-5 certificate of the Commissioner of Tirupati Municipality dated 14.12.2005 proved through his witness, the municipal employee among P.W.5 itself shows that she is still residing in the house of the petitioner and not left his company but for from his pleading that it is he left his house and staying away. There is nothing to show she intended to put an end to the marital tie muchless that continued for two years prior to filing of petition to constitute acts of desertion and even to say there is any constructive desertion, there is no material at all within the parameters of the well settled expressions of the apex Court in

Bipin Chander Jai Singh Bhai Shah V. Prabhawati^[3] and ***Laxman V. Meena***^[4] that were referred and relied in ***Naveen Kohli V. Neelu Kohli***^[5] that was followed in ***Samar Ghosh*** supra. Coming the acts of cruelty on the part of the respondent-wife, out of five grounds, mainly placed reliance of not preparing food, etc., it is his case that about six months of his marriage, they lived happily and later differences arose from her unbecoming conduct with aggravating tendency and contemptuous behaviour. It is his case that even she sent out his mother from the house. It is latter, the couple lived together according to him for some time, it is not even his case muchless any whisper in the evidence that he ever prepared any food for him muchless for his wife or that any practice of purchase of food from outside for him and also to provide to her. Even to say such conduct of not preparing food while his mother was also there, his mother was not a witness and since no more, no even any domestic servant was examined among P.Ws 1 to 5 he cause examined including himself. P.W-2 is no other than a worker in his shop. What he deposed about respondent spoiled milk, curd and flowers brought by petitioner to perform pooja not even stated with any whisper of respondent did not prepare food and how the food was the petitioner having if at all since worker under P.W-1. Even regarding the so called spoiling of Pooja material what P.W-2 deposed is a single or isolated instance even to give any credence to his version apart from that isolated instance does not tantamount to act of cruelty as also rightly concluded in para No.30 of the Judgment of the trial Court including with

reference to evidence of P.W-1. Further, there is nothing even from the evidence on record to show respondent got any contempt for any God or for performing any Poojas in the house even to believe such version she spoiled any Pooja samans muchless with any ill-motive or guilty mind. Even coming to his coming home in nights after business hours and not opening doors by the respondent and made him to sleep outside, could it be believed that it was if at all the continuous conduct, even no brother of petitioner come forward and no neighbours even admittedly examined for saying by petitioner P.W-1 that he was made to stay out of the doors from her not opening the doors in the nights to give any little credence as neighbours are the best witness if at all there is any truth. It is also unbelievable of no neighbors come forward even such a miserable event happened so to speak the truth. Coming to the beating of the petitioner by the respondent, there is no date or time or any specific instance the petitioner could mention in the petition muchless in his evidence for so called beating and ill-treating to constitute the said acts as physical and mental cruelty. So far as refusal of conjugal life by the respondent to the petitioner from the beginning concerned, even it is in the petition that after their marriage for six months they lived happily that is also his chief-examination. In fact, the marriage was admittedly performed on 29.08.1998 at Padmavathi Kalyana Mandapam, Tirupati and six months happy stay even counted there from till March, 1999, his Ex.A-1 legal notice was dated 03.10.2002. Could it be probable to believe that without even preparing food without even opening doors by making

him stay outside in nights and without even providing conjugal life and even for her beating and abusing he could bear with all through for more than 3 ½ years without whisper. It is not even his case by examining any worth witnesses through whom if at all particularly the best witnesses or his brothers and family members if not also neighbour by examination of any disputes raised or any assurances given. In fact among the Exs.A-1 to A-5, Ex.A-2 is postal acknowledgement for Ex.A-1 notice and Ex.A-3 is photo. So far as the other conduct of the respondent in not talking to him or expressing contempt by placing reliance Ex.A-4 bunch of paper slips, the paper chits contains if one peruses, it is crystal clear that her addressing his highly submissive and as a dutiful and obedient wife. It is needless to say that unless both parties at fault, it is not possible to have matrimonial disputes with widening of differences and it is in the case of the couple who are not ideal only as ideal couple will glass over differences and misunderstandings and bickerings and adjust between them. Even a perusal of the slips indicate also from his not talking terms with her the giving of slips by her noting including to the phone calls he received in his absence could not be the outcome. So, also the payments he has to make that put to her notice by others in his absence to communicate by noting on the slip that cannot be considered as cruelty on the part of the wife more particularly from what is observed supra from contents of slips with highly submissive writings in bringing the facts to his notice to attend that itself shows the due reverence and respect of her towards him and that belies even of his versions of not providing food or not providing conjugal life or not opening the doors at nights

muchless any beating or abusing by her.

11) In his evidence in the cross-examination it was suggested to him that the respondent was extending the maximum cooperation and fond of him and never harassed or ill-treated or abused or threatened muchless through her parents or relatives nor disliked his mother nor separated him from his brothers by acts or conduct nor spoiled any Pooja samans nor kept him out of the doors without opening nor threatened to implicate in a criminal cases. He deposed that after marriage they were residing at Door No.180, Anantha Street, Tirupati. He denied the suggestion of while going out he was locking the house front door from outside by keeping her inside till his arrival which he denied no doubt. Coming to his claim that when he sustained fracture of his left wrist, she was not cooperative to him denied by her categorically. It is her version that it was he that was beating her and abusing and she sustained fracture to her right hand by his beating. It is suggested by her that she was necked out of the house, from which there were even disputed through elders, and joined. What he claimed is that said mediation by her was on his questioning for removing Thali which is not possible to believe. He deposed that he never gone to Doctor to take treatment for birth of child and he does not know when respondent cause examined by Gynaecologist and the Doctor opined of she can conceive. Coming to the chief-examination affidavit saying she filed a false case against him in the cross-examination page No.3, he deposed that Crime No.160 of 2002 of West Police Station, Tirupati was registered for his

missing. In his chief-examination affidavit on the ground of appeal what he claimed of she did not have any endeavour for his so called missing in saying he went to pilgrimage, on the other hand he clearly speaks including from the cross-examination of the crime registered above was for his missing as he admitted that he went to pilgrimage without informing to anybody and there from his brother according to his appeal grounds reported the police about his missing. It is her case including in the suggestions to him of he concealed his presence with his brothers by staying away to her to see that she would leave the house. In fact, it is his conduct to harass her in not even informing after he left as to his whereabouts and concealing himself for which a dutiful wife she cause reported at best to his brothers and made even endeavour through her brothers to trace his whereabouts. There is thus nothing to find fault with her muchless to say she has no anxiety for his missing. It is her counter that he was in the habit of consuming alcohol and coming late in the nights that he denied the suggestion in the cross-examination in this regard she also deposed the same in her evidence.

12) Even P.W-2 in his cross-examination deposed that he is a manufacturer of small vessels used for Poojas in Galli Street, Tirupati and regarding his acquaintance with P.W-1 he pretended that petitioner-P.W-1 used to visit their house for learning work and there from became friend of him. It is not even the case of the petitioner that he went for farming work under P.W-2 for his acquaintance. He deposed that he is no even personal knowledge about the petitioner's father and

grand father and they are owning shops at Tirupati but for petitioner's owning brass vessel shop at Chinna Bazar Street, Tirupati. He denied the suggestion of he is working in the workshop of petitioner, where petitioner cause preparing vessels and items which lies at Galli Street. In chief-examination what P.W-2 deposed is that he used to visit P.W-1's house and at one occasion he allegedly noticed the respondent thrown away flowers and fruits meant for Pooja of petitioner. It is important to note the pooja samans in the pooja room, could it be believed of he went to the pooja room of the big house of the petitioner and noticed at that alleged isolated occasion so called throwing away of pooja samans. As discussed already he did not even whisper respondent never prepared any food or petitioner complained of no conjugal life or of beating him but for to say whenever he went to their house he was noticing respondent quarrelling with petitioner on trivial matters. In the cross-examination he deposed that he never went to any hotel with the petitioner even to say any credence of petitioner's evidence of respondent not prepared any food. He deposed categorically in the cross-examination of he cannot say date or year or month when he visited the house of petitioner and respondent and noticed her throwing the fruits and flowers meant for Pooja even for that alleged incident to give credence to his evidence. It is his evidence further in the cross-examination that in the year 2001 petitioner left the house and he has no knowledge of his whereabouts even latter. Can it be believed that he is so called close friend of him and if so, no knowledge of his whereabouts or where he left if not residing with his brothers' or somewhere he

categorically deposed that he never witness respondent beating the petitioner for his so saying in chief-examination. If at all even not believed of he is not worker under P.W-1 his residence is far away and not even in the same or nearby street to petitioner's house or shop to give any credence to his version.

13) Coming to the evidence of P.W-3 in his cross-examination, he deposed that even by the time of marriage of petitioner and respondent one of the brothers of petitioner was residing separately with his wife and all the four sisters of petitioner even already married by then. In his chief-examination he deposed the respondent failed to cook food and served and failed even to talk to him. However, in the cross-examination he deposed that he has no personal knowledge of this. He could not even say being resident of Bandla Street as to how he came to know of these muchless to speak several facts regarding the happenings within four walls, apart from fairly admitted in the cross-examination of no personal knowledge of their family life.

14) P.W-4 of Pagadamanu Street, Chittoor though deposed in tune to the chief-examination of P.W-1 almost, in his cross-examination he deposed that petitioner's brother's wife is his own sister and he was requested by petitioner to come and depose in this case. He deposed that the respondent did not beat the petitioner in his presence at any time and he has no personal knowledge about alleged threats by respondent or including of hurling to throw bombs for his so saying in the chief affidavit. Even P.W-4 did not speak as to he mediated any

disputes between the couple muchless on any particular day with reference to any particular instance that too he is a resident of Chittoor which is more than 50 K.Ms away to Tirupati, where the petitioner and the respondent are residing to give any credence to his evidence regarding day to day life of the petitioner and respondent, that too with no personal knowledge of any instance. P.W-5 who is the municipal surveyor of Tirupati town was examined to prove Ex.P-5 authorisation given by the Municipal Commissioner to visit house of the petitioner to say pursuant to which he visited the house of D.No.180 of Anantha Street and D.No.180-A of Vijaya Lakshmi Street, Tirupati and with the same building two door numbers, since with opening to the two streets of the same building with ground floor, first floor and second floor, where some persons were residing by the time of his visit as per the Commissioner's authorisation on the date of his giving evidence at 8.30 A.M before his coming to witness box on that day. He deposed that there is a municipal water tap connection to the building and for the last four years the municipal water charges were not paid and the water tap was even disconnected and he did not observe even there is electrical supply to the house or not even and he did not even assess the age of the building as to fit for dwelling or not and he did not obtain acknowledgement from any inmates to say his visit of the premises. Even from his said evidence when there is no even water supply and water tap was disconnected for the last four years and that is the case of the respondent that too harass the respondent and to drive her out of the house, petitioner left the company and not providing monies

and cause disconnected water supply and electrical supply. It is highly unbelievable to say she was legally enjoying the property including letting out to any tenants. When there is no water supply admittedly and no current supply even according to her for the past several years is it believable any tenant occupied muchless by paying substantial rents if at all for her survival any such realisation of rents when even according to him she is a poor woman and he is affluent, not even his case of he is providing monies to her survival having left her company by staying away.

15) In the cross-examination the respondent deposed that she is one of the three daughters to her parents live by agriculture. She deposed that her mother-in-law stayed with her and her husband for about three years after marriage and her husband's younger brother Ravi was staying separately even by the time of her marriage but for her husband's elder brother Ramana only for two years after her marriage and latter separated for reasons better known to them and for her no fault, she deposed that her brother-in-laws and mother-in-law were also beating her and denied the suggestion that she was subjecting them all to cruelty from which they separated and staying away. In the cross-examination she deposed without even she was subjected to beating and harass them she could not chose to report to the police. She could not give the date or month of the mediation for her husband staying away, through her parents she deposed that her husband was addicted to drinking etc., and not even coming to house regularly in the nights. She deposed that in Crime No.160 of

2002 about missing of her husband in the police enquiry she stated that her husband secreted himself in the house of his brothers and after that he did not come back to the house at any time. She deposed that even while she was residing together her husband was not talking to her from which she was noting the information on chits and placing before him. She deposed that in the house after her husband left, the portion was collapsed and no tenants were staying muchless any tenant by name Venkatachalam by paying Rs.4,000/- per month. There is nothing more even from the cross-examination of R.W-1 by petitioner regarding not providing conjugal life, not opening doors in nights, not preparing food or beating and abusing him. Among R.Ws 2 and 3, R.W-2 who is one of the elders at the instance of respondent's parents in arranging the marriage and in the mediation from petitioner addicted to vices and ill-treating respondent by advising them to live amicably and undergo treatment for any problem to conceive children as respondent was examined by Gynaecologist found she can conceive but for defect in petitioner. In the cross-examination, he deposed that respondent's sister is his wife and at the time of marriage Rs.2,00,000/- given as dowry not covered by any photographs of said payments, in support of the version of respondent of even said amount given she was subjecting to ill-treatment for additional amounts. He deposed that petitioner is addicted to vices like drinking and gambling which he came to know after two years of marriage and she was also beaten by petitioner for questioning and she sustained fracture though he cannot say at which hospital she was treated but was informed by

respondent about two months after the incident showing the healed fracture and about his demanding for additional dowry. R.W-3 Krishna Murthy, R/o.D.No.190 of same Anantha Street, the residence of D.No.190 of the petitioner situated, where they lived together for some time and later he left the house. R.W-3 categorically deposed that both are relatives to him and even before marriage of petitioner and respondent, petitioner's younger brother already married, separated from the family and petitioner's elder brother also separated latter, but for petitioner's mother was staying with petitioner and respondent for about three years after marriage, where the respondent was subjected to ill-treatment including for additional dowry and it is respondent's father's request he along with other mediators advised the petitioner to amicable live with respondent which he refused and even himself and other neighbours of the street to the petitioner many a time warned him for his high handed acts against the respondent. In the cross-examination he deposed that he is working in Venkateswara Grameena Bank and residing in the same street of the petitioner in a distance of seven houses away towards West to him and that he acted as mediator for arranging marriage between the petitioner and the respondent thereby he knows the dowry paid to the petitioner directly by respondent's parents and he also personally witnessed the ill-treatment suffered by the respondent in the hands of the petitioner many a time though he cannot give the dates. He deposed that some times she was telephoning to him and some times he came to know from other neighbours and rushing to the house of petitioner against his harassment. He deposed that it is brothers of the petitioner who gave police

report against respondent for petitioner missing and petitioner and himself are dayadis and respondent was even beaten to sustain a fracture by petitioner and she was treated by Dr.Sunanda Kumar Reddy which he know. He denied the suggestion of there is an enmity with petitioner and he is deposing falsehood. Apart from the above evidence, respondent deposed categorically and even suggested to petitioner including in her counter of she issued reply to the petitioner's Ex.A-1 notice dated 03.10.2002. No doubt that was not seen the light of the day. No doubt it is the contention of the petitioner-appellant that had she issued notice she could have filed and the non-giving of reply to the notice leads adverse inference against her defence. If it is in any transaction between third parties other than matrimonial matter, definitely the non-giving of reply leads an inference of but for no defence reply could be given. However, that cannot be extended to a matrimonial matter for no house-wife or husband generally come forward to raise a disputed defence to further strain the relationship. Thereby, the non-giving of reply cannot give any adverse inference therefrom to the defence of the respondent leave about her say is reply cause issued on 28.10.2002 to the counsel of the petitioner. In fact she did not even chose to give any police report even there is evidence including that of R.W-3 and R.W-2 in support of her version of she was beaten by petitioner and sustained fracture and treated by Dr.Sunanda Kumar Reddy. That itself shows her docile and reverential conduct to say that the contention of the petitioner of he was beaten by the respondent or she sustained

fracture is not correct and further to support his version there is no any material muchless any medical record placed by the petitioner. Regarding acts of cruelty, he alleged for non-preparing food, non-providing conjugal life, not opening the doors and for alleged beating or spoiling Pooja samans as discussed already, no even any neighbour muchless any of his brothers of whom one of the brothers jointly stayed with the petitioner for some time cause examined leave about mother of the petitioner, subsequently passed away for no even neighbour examined on his side and one of the neighbours R.W-3 admittedly of same street with seven houses away categorically deposed though related to petitioner that it is the respondent that suffered ill-treatment in the hands of respondent and not vice-versa. It is there from when the trial Court concluded that the petitioner cannot take advantage of his own fault and from perusal of the material on record, there are no worth disputes or differences for him to stay away muchless deserting her and no cruelty or desertion on her part and the contention of marriage broken down irretrievably is also not tenable besides not a ground to put an end to the marital tie.

16) Having regard to the above and from re-appreciation of the evidence on record discussed supra, there is nothing to interfere with the conclusions arrived by the trial Court in dismissing the claim of the petitioner-husband for divorce either on the grounds of desertion or cruelty muchless to say the marital tie is broken down irretrievably to view the same from her conduct as act of cruelty for no factual foundation.

Accordingly point No.i is answered.

POINT No.ii):-

17) In the result, the appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions if any pending shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA

RAO

1st May, 2015

ksh

[\[1\]](#) (2007)4 SCC 511

[\[2\]](#) AIR 2011 SC 114

[\[3\]](#) 1956 SCR 838

[\[4\]](#) AIR 1964 SC 40

[\[5\]](#) (2006)4 SCC 558