

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

C.M.A.No.511 of 2005

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

Impugning the decree of divorce granted on the ground of cruelty and desertion under Section 13 of the Hindu Marriage Act, 1955, on the application filed by the husband against the wife of the wedlock dated 24.04.1992, on the file of learned Additional Senior Civil Judge, Kakinada dated 31.03.2005 in O.P. No.205 of 2002; the respondent, wife, therein preferred the appeal under Section 28 of the Hindu Marriage Act, 1955.

2) The contentions in the grounds of appeal are that the learned Judge failed to see that the respondent could not establish any of the grounds alleged in the divorce petition, that the learned Judge ought to have seen that even according to the divorce petition it is alleged that the petitioner left the house of the respondent on 23.12.2001 and whereas the divorce petition is filed in the year 2002 within one year as such the ground of desertion could not make out for there is no time gap of two years for grant of divorce on the ground of desertion, that the learned Judge ought to have seen that except the oral testimony and interested witnesses there is no independent evidence to establish the grounds of desertion and cruelty, that the learned Judge erred in giving much credence to Ex.A-6

khararnama even though the appellant/respondent adduced evidence to disapprove the genuineness of Ex.A-6 Khararnama and the conduct on the part of the appellant to show that she did not withdraw the amount deposited in a bank which clearly indicates that the alleged khararnama was not acted upon and the same was brought into existence by unlawful means and duress, that the learned Judge erred in holding that the marriage was broken irretrievably for grant of divorce, that the learned Judge erred in giving much credence to the evidence of the respondent herein with regard to non-cooperation on the part of the appellant in cohabiting with him during their marital life which is not supported by any other evidence except the oral self-serving testimony of the respondent and more so and the same is rebutted by the respondent, that it is evident that the appellant has conjugal life with the respondent and they got female child during their lawful wedlock and prayed to allow the appeal by setting aside the decree of divorce granted by the learned I Additional Senior Civil Judge, Kakinada in O.P. No.205 of 2002. The learned counsel for the appellant reiterated the same during the course of arguments.

3) Whereas, it is the contention of the learned counsel for the respondent-husband that the decree dissolving the marriage passed by the lower Court is just, supported by reasons for the grounds of cruelty and desertion made out and the Court also can take note of the subsequent conduct of the respondent-wife with reference to Ex.A-6 Khararnama

and thereby sought for dismissal of the appeal.

4) Heard the learned counsel for both sides and perused the material on record. The parties are being referred to as arrayed before the lower Court for the sake of convenience.

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

- i) Whether the decree dissolving the marriage of the couple dated 24.04.1992 on the ground of cruelty and desertion passed by the learned I Additional Senior Civil Judge, Kakinada dated 31.03.2005 is unsustainable and requires interference by this Court, while sitting in this Court either to set aside or modify, if so on what grounds?
- ii) To what result?

POINT No.i:

6) The parties are interrelated even before marriage, for the fact that the respondent-wife is no other than sister's daughter of the petitioner-husband. There is also no dispute on the fact that they blessed with a child in their wedlock. In their short period of conjugal life, after consummation of marriage, for the differences latter crept in. From the evidence on record of P.Ws 1 to 3 and R.Ws 1 to 3 with reference to Ex.A-1 to A-8 which include notice cause issued by the petitioner-husband to the respondent-wife which she acknowledged and also another notice issued by him which she also acknowledged with no reply to the notices it establishes that the matrimonial dispute went before elders many a time that resulted in the kharnama executed between the parties to go for consent divorce by her receiving Rs.1,66,000/- for permanent alimony that is

kept in joint account in the name of her and one of the elders to the said settlement which is outcome after several sittings and the letter addressed to the bank by the respondent and one of the elders (in whose joint name it lies) to renew the same. It is also not in dispute of they filed consent divorce O.P. No.46 of 2002 and when the matter is posted for six months waiting minimum under Section 13(b) of the Hindu Marriage Act, she later failed to attend, as a result it was ended in dismissal for the requirement of appearance of the parties for hearing, even she did not chose to withdraw the consent, as a condition precedent under Section 13(b)(2) of the Hindu Marriage Act. It is therefrom, he maintained the present petition for divorce. The averments show that though they lived together for nearly 9 years after marriage under one roof and blessed with a child in the early stages of the marital life; there was continuous and constant refusal and denial of conjugal life to the petitioner-husband by the respondent-wife, though it is one of the prime object of the marriage of happy conjugal life as part of biological requirement. It also shows from the evidence on record that she left his company ultimately along with the child on 23.12.2001 without his consent and even for his notices to join and another notice else to give divorce, she failed to respond with no reply including the notice averments to show her constant refusal to conjugal life and ill-treatment and she has no mind to lead life with him. The evidence on record further shows that there were

different sittings through elders and it leads to their ultimate decision to dissolve their marital tie for no possibility of living together and the consent divorce petition filed was pursuant to it and from the Ex.A-6 Khararnama that is equal to Ex.A-7 executed later on a stamp paper both by consent and an amount of Rs.1,66,000/- pursuant to it deposited by the husband and the child is given custody to him and she also has taken away all her belongings and household articles by nothing left with petitioner-husband and it is therefrom the consent divorce application filed. Thus, it is a clear case there from, atleast besides the continuous and constant refusal to the conjugal life almost from the beginning but for a short period of happy married life, tantamounts to mental cruelty from the evidence on record, above facts also show the animus deserendi to put an end to their marital tie with no intention to live together on the part of the wife with the husband for not even approached the Court withdrawing the consent and not even disputed the Khararnama, if not executed voluntarily for not even disputed the consent divorce, if not voluntarily and having admitted of she also approached the advocate and became party to the consent divorce petition filed. The setting up of the belated defence in the case as if signatures of her were obtained by force, is untenable also for the reasons that admittedly she did not issue any notice, she did not file any complaint for the reason of the consent given is free and voluntary and with animus deserendi and she did not even file any case for restitution of conjugal rights. Apart from it the subsequent

conduct also clearly shows the desertion on her part though Khararnama of putting an end to the marital tie which was dated 14.02.2002 reduced to writing separately again on stamp paper dated 25.02.2002 and the consent divorce petition was filed in O.P. No.46 of 2002 for the consent not even withdrawn. Apart from the constructive desertion from refusal to conjugal life, it is therefrom a clear proof of animus deserendi with no any mind to live on the part of the wife to lead life with the husband is established even two years period by date of petition not made out after she left on 23.12.2001, from her earlier and subsequent conduct supra. It is the settled law that the Court can take subsequent conduct of the party also in deciding the same as appeal is continuation of the main O.P proceedings and the appellate court is conferred with all powers of the trial Court in considering the same; that too she also became a party for renewal of the deposit amount of permanent alimony pursuant to the khararnama in deposit from her consenting; though for defence sake she contested and maintained the appeal impugning the lower Court's decree of dissolution. Thus, for this Court while sitting in appeal, practically there is nothing to interfere. Accordingly, the point No.1 for consideration is answered

POINT No.ii:

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

R. SUBHASH REDDY, J

Dr.B.SIVA SANKARA RAO, J

February 11, 2015
KSH