

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

C.M.A.558 OF 2008

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

The unsuccessful petitioner-husband of the marriage dated 30.03.2000 at Serilingampally under Hindu law and custom, preferred the petition for divorce on the grounds of cruelty and desertion in O.P. No.148 of 2005 on the file of I Additional Senior Civil Judge, L.B.Nagar, Rangareddy District against his wife, the respondent therein since held by the trial Court from evidence on record that of P.W-1 to 4 of which P.W-3 evidence is taken out of consideration, Exs.A-1 and A-2 and D.Ws 1 to 5, impugning the said divorce dismissal order and decree preferred the appeal with contentions that the lower Court ought to have appreciated that the appellant-petitioner sought dissolution of marriage with the respondent on two grounds viz., desertion and cruelty and even if either of the two grounds are made out the Court should have ordered the petition, that the lower Court ought to have observed that till the petitioner filed this divorce application, the respondent wife did not move her little finger to take steps to have reunion of marital life, even though she had recourse open to her under law, that the trial Court erred in accepting the evidence of the respondent's side even it was the respondent that went away from the company of the appellant-petitioner on 05.03.2004, that the respondent in her evidence in the criminal case No.1141 of 2005 on the file of III Metropolitan Magistrate,

L.B.Nagar Cyberabad, Rangareddy District, on 30.10.2006 as P.W-1 stated that she was away from her husband for one year from the date of complaint i.e., dated 06.03.2004 and it takes back the time of desertion to the beginning of the year 2003, that in the very same case in her statement under Section 161 Cr.P.C she mentioned that she was away from her husband since 1 ½ years back and from that, it takes back her desertion to the middle of the year 2002 and she added in her evidence that she waited for a period of 3 to 4 years before giving complaint on 06.03.2004 and therefore it is clear, as contended by the appellant-petitioner, of she abandoned the appellant since 2000 and therefore the finding of the lower Court is erroneous. It is also contended that, the lower Court failed to appreciate the intention of the legislature of cruelty alleged need not be of such a degree to cause any sort of apprehension of danger in the mind of the petitioner to claim divorce, that though the quarrels are minor in nature, the very fact that the respondent wants the appellant to drive away his parents and to live with her parents will certainly amount to an act of cruelty, that the trial Court ought to have discarded the theory of miscarriage when such miscarriage which is an essential ingredient more particularly from the angle of wife could not have been forgotten to mention in the counter with improvement only in evidence, that the lower Court ought to have disbelieved the version of the appellant has beaten and ill-treated the respondent by demanding dowry, that the lower Court ought to have appreciated that father of the respondent would not have deposited amount of Rs.60,000/- with Andhra Bank, Sithapalmandi without any document and should not

have concluded that if the appellant/petitioner goes to the house of the respondent he could have earned Rs.5,000/- per month and such a gesture is only a ruse in this type of cases to allege that the wife is beaten for additional dowry and harassed by the husband, that the case in C.C. No.1141 of 2005 on the file of III Metropolitan Magistrate, L.B.Nagar, Rangareddy District filed under Section 498-A I.P.C was dismissed on 13.08.2007 and it demolishes the contentions of the respondent in this case, that the trial Court ought to have appreciated that cruelty is one ground and desertion is another ground and in this case desertion as well as cruelty are proved independently to enable the appellant to get divorce and prayed to allow the appeal by setting aside the order dated 06.01.2007 in O.P. No.148 of 2005 on the file of I Additional Senior Civil Judge, Rangareddy District at L.B.Nagar.

2) Whereas, it is the contention of the respondent (wife) through her counsel that, the order of the lower Court dismissing the claim for divorce sought by her husband is supported by just conclusions with reasons and for this Court while sitting in appeal. There is nothing to interfere and hence sought for dismissal of the appeal with costs.

3) Heard both sides. Perused the material on record. The parties 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 impugned dismissal order refusing to grant decree of divorce either on the ground of cruelty or desertion by the trial Court is unsustainable and requires interference by this Court while sitting in

appeal and with what observations?

ii) To what result?

POINT No.i:-

5) The relationship between the parties is not in dispute. So far as the cruelty concerned there are no any specific instances mentioned as to what constitutes cruelty, but for stating desertion w.e.f 14.06.2002. The pleadings regarding cruelty and desertion are that she was picking up quarrels and insisting to stay away to his aged parents by showing reluctancy to join his society, despite his efforts, with no conjugal life including with elders' intervention but for hardly one month and ultimately left his company on 14.06.2002 and lodged a complaint alleging dowry harassment by foisted a false case. The contention of the respondent-wife is that she was driven out of his company in October, 2003 and not allowing her to join even she is ready and willing to join him and the alleged acts of cruelty and desertion by picking up quarrels and insisting to stay away to his parents near to her parents and refusing to join him are untrue. Coming to the evidence of his side regarding cruelty and desertion from said plea, P.W-4 is only a hearsay witness with no credence to his evidence, as though in his chief version he claimed as if respondent-wife quarrelled with the petitioner to sent out his aged parents; in the cross-examination he stated that he was so informed and he has no personal knowledge. The evidence of P.W-3 is eschewed with no value. P.W-2 also could not substantiate anything and even parents of the petitioner not examined to say the so called quarrels by

respondent with them muchless by her unwillingness for their stay with their son. The trial Court therefrom concluded that there are no acts of cruelty either from the pleading or from the said evidence of P.Ws 1 to 4 and no even any scrap of paper filed muchless showing exchange of notices prior to the filing of petition or about any criminal complaint she filed that too with intent to harass to constitute cruelty. Even coming to desertion from what the evidence of P.Ws 2 and 4 no way corroborate the version of P.W-1 of she left his company on 14.06.2002 and against the said *ipsi dixit* version in support of the plea by petitioner in the divorce case filed on 26.04.2005 to show minimum two years desertion by wife with no mind to join and with permanent animis desrendi. The evidence of respondent-R.W-1 including her witnesses 2 to 5 in categorical terms including from the cross-examination deposed that she was thrown out of the house during October/November, 2003 and even mediations and efforts made, he refused to allow her to join. Thus, there is nothing to say there is any cruelty on the part of the respondent from refusal of conjugal life even and there is no desertion at all. R.Ws.1 and 2 evidence also establishes that she was thrown out of the house on 15.10.2003 with the child and thereafter even went to join the petitioner, he did not allow her to join him. Therefrom the trial Court concluded that there is nothing to say any acts of cruelty and desertion to put an end to the marital life on the part of the respondent-wife.

6) The trial Court is thereby from the evidence on record is correct in its conclusion supported by reasons and for this Court even from re-appreciation of the evidence discussed

supra, there is nothing to interfere but for to confirm.
Accordingly point No.i is answered.

POINT No.ii):-

7) 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

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23rd April, 2015
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