

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.NO.195 OF 2005

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ORDER : (Per Dr.B.SIVA SANKARA RAO,J)

The appellant herein, no other than the petitioner-husband in O.P.No.58 of 2001 on the file of the Senior Civil Judge, Ramachandrapuram filed against his wife under Section 13(1)(ia)(ib) of the Hindu Marriage Act (for brevity 'the Act') to dissolve their marriage dated 01.02.1998 performed at Konkuduru, East Godavari District as per Hindu rites and caste custom on the grounds of cruelty and desertion, preferred this appeal aggrieved by the dismissal decree and order dated 08.12.2004.

2. The contentions in the grounds of appeal as well as the oral submissions at the course of hearing through the learned counsel of the appellant in nutshell impugning the dismissal order by the lower Court dated 08.12.2004 are that the trial Court failed to consider the evidence on record, oral and documentary of PWs.1 to 3 coupled with Exs.A.1 to A.3, which clearly establish that the petitioner-husband was subjected to cruelty in the hands of the respondent-wife which is proved more than required to the entitlement of the relief; that the trial Court failed to see that the respondent also had no mind to lead marital life with the petitioner from the inception and thereby there is a desertion, if not, at least constructive desertion that also revealed from Exs.A.1 to A3; and the trial Court should have seen that the evidence of RWs.1 to 3 is contradictory and no way disprove or efface the evidence on the side of the petitioner referred supra and the so called mediation through RW.3 is an introduced version for

reasons better known and also the so called demand for any amount or RW.2 was demanded to give land, that the trial Court should have seen that Ex.A.1 crucial letter written by the respondent which she even admitted; and the allegation of its obtained by coercion is untenable from the very tenure of the letter and its contents running in three pages with free flow of writing; and even that letter is silent regarding the allegation of demand for dowry or land to believe such version of RW.3 and RW.2 to say their version is belying from the very letter written by RW.1 respondent covered by Ex.A.1 and that the marriage was otherwise broken down irretrievably with no love lost and though it is not a ground *per se*, it has to be appreciated with reference to the cruelty proved from the evidence on record so also the desertion. Hence, to set aside the order dismissing the decree of divorce by the lower Court in O.P.No.58 of 2001, dated 08.12.2004 and allow the appeal dissolving the marital tie between the appellant-husband and respondent-wife.

3. Whereas, it is the contention of the learned counsel for the respondent-wife in support of the dismissal order passed by the lower Court that for this Court while sitting in appeal, there is nothing to interfere and there are no grounds of cruelty, much less desertion made out by the petitioner and Ex.A.1 letter is obtained by coercion and not voluntarily executed one and it is beyond comprehension to believe that anybody can execute such a letter voluntarily and the couple living apart is not *per se* a ground, much less to construe constructive desertion, but for to appreciate with reference to the factual matrix of case on hand as to there is any permanent *animus deserendi* that irretrievably break down of marriage is not a ground to dissolve the marital tie as per the law available and as per the settled expressions and in support of that contention the respondent-wife placed reliance upon the expressions in **Bodapati Umamaheswari v. Bodapati Venkateswara Rao, Darshan Gupta v. Radhika Gupta, Gurbux Singh v. Harminder Kaur, Vishnu Dutt Sharma v. Manju Sharma and Gajjala Rajeswara Reddy v. Gajjala Revathi.**

4. Perused the material on record. The parties are being referred, for the sake of convenience as petitioner-husband and respondent-wife as arrayed before the lower Court.

5. Now the points that arise for consideration are:

1. Whether the respondent-wife is guilty of cruelty and desertion towards the petitioner-husband and if so, the marital tie between the couple is liable to be dissolved and if so, whether the lower Court's impugned order dismissing the petition for divorce on the grounds of cruelty and desertion is unsustainable and requires interference by this Court while sitting in appeal and with what observations?
2. To what relief?

POINT No.1:

6. The undisputed facts are that the marriage of the petitioner and respondent was an arranged one and performed as per Hindu rites and caste custom that was on 01.02.1998 at Konkuduru Village of East Godavari District, Andhra Pradesh and in their wedlock they were blessed with no issues and both are even prior to the marriage closely related for the fact that the father of the respondent is the second brother of the petitioner's mother (junior maternal uncle's daughter is the wife of the petitioner). It is also not in dispute that Ex.A.1 is the letter running in three pages, dated nil, in the handwriting of the respondent-wife, but for the rival contention of her that it is obtained by coercion and not voluntarily executed against the contention of the petitioner that, but for voluntarily executed, it is quite impossible for her to execute such a letter running in three

pages with such a free flow of writing in the natural course by disclosing her mind, thought and reaction in the writings.

7. The divorce petition was filed in the year 2001 on the grounds of desertion and cruelty with the averments that the couple lived, after marriage dated 01.02.1998, in May, 1998 for about 20 days at Nizamabad, where the husband was working in State Bank of Hyderabad; and that again in August, 1998 for about one month and in that period they went in tour for Shirdi, Ajanta and Ellora etc. along with mother of the petitioner and before going to Tirupathi as per the plan, when they reached Hyderabad, there was a quarrel picked up by her and left Ramachandrapuram of East Godavari District to her native place by bus from which the petitioner and his mother cancelled the trip to Tirupathi and he followed her and dropped at Ramachandrapuram at her parents' house and returned back to Nizamabad and later only in the month of February, 1999, she came and joined him and stayed hardly 20 days in that spell. It is his further case that later in July, 1999 he received a letter from her, which is Ex.A.1, expressing her dislike from the inception.

8. The contentions of the respondent-wife in her counter regarding desertion and cruelty is that she is having love and affection towards him with gestures for their marriage from their childhood and continued the same even after their marriage as her father brought up the petitioner in the healthy atmosphere with affection, as he has no paternal love and affection. The petitioner after marriage used to keep the respondent with her mother staying at Konkuduru to attend the landed properties and cultivation by staying at their house, while he was lonely living away but for taking in intervals and once they were at Nizamabad, the petitioner's mother kept the respondent in a room under lock without providing food and after he came from bank duty they tried to neck her out which she resisted and wanted to live with him at Nizamabad for the healthy marital life and for that it was

made a condition to write a letter-Ex.A.1 to his dictation and in order to preserve the marital life, she was made to write that letter under duress and undue influence and the contents are not that of her, but by him and it was not a free consented letter and it has no legal sanctity, so also the contents therein and it is a procured document. She contends further that having lead marital life at Nizamabad and native place Konkuduru up to April, 2000 and they last resided at Konkuduru on 20.04.2000, that even she was putting up with the harassment in the hands of respondent's mother in his absence and also in his hands even physical from his beating with demands to give divorce with intend to marry another girl for monetary gain. The petitioner, who is guilty of cruelty and desertion, cannot take advantage of his own fault. From that, her contention is there is no desertion much less two years statutory period before filing of the application for divorce from the date of last lived together.

9. Now coming to proof of the same, PW.3 is claimed as one of the mediators, PW.2 is mother, PW.1 is the petitioner, RW.1 is the respondent and RWs.2 and 3 are mediators. Ex.A.2 is the office copy of the legal notice, he cause issued to the respondent and her father and Ex.A3 is the reply notice of her. In Ex.A.2, his legal notice dated 12.03.2001 there is a mention at para 7 of Ex.A.1 written by wife to him in July, 1999 and that also constitutes cruelty and desertion. In her reply covered by Ex.A.3 regarding Ex.A.1-letter what she stated is for her staying at Hyderabad from his demanding to drive her to Konkuduru having kept her in a room under lock without food, she was constrained to write that letter to his dictation and it was obtained under coercion and duress and not voluntarily executed by her, but for to preserve the marital life she was constrained to so write.

10. Importantly, Ex.A.1-letter of July, 1999 written by her with her handwriting, from the above so also from the evidence on record including of petitioner-PW.1-husband and respondent-RW-1-wife

from their cross examination; if at all it was obtained by force and duress in July, 1999 at Nizamabad, later indisputably they came back to Konkuduru and from 14.04.2000 to 20.04.2000 they lived together at Konkuduru; and that according to her, in the counter as well as Ex.A.3 reply she was left to Konkuduru then or thereafter, even she could have issued a letter or notice stating Ex.A.1-letter was obtained by force or fraud or under duress. There was no meaning in keeping silent till her reply under Ex.A.3, dated 25.03.2001 to Ex.A.2-notice, leave about same version reproduced in her counter to the divorce petition. From this, the Court in appreciation of evidence not only can look into the oral and documentary evidence, but also the attending circumstances as trial is a voyage in which truth is the quest, thus ascertaining truth is part of duty of the Court and for that besides oral and documentary evidence, the attending circumstances also give a lot of clue; so also the conduct of the parties with reference to Section 3 and 8 of the Indian Evidence Act in appreciation of any particular fact in dispute, how far considered to be true or not and reliable or not including as to the credibility of oral evidence of the witness and probative value of documents.

11. From that a perusal of Ex.A.1 letter nowhere shows any signs of tremors in the writing, but for outcome of a very natural flow that too, running in three pages for not even few sentences, much less a page. Such a lengthy letter besides not possible to dictate at a stretch for her writings with such a free flow without any unnatural pen halts or lifts or strokes, but for voluntary flow from her thought and mind in reproducing by words in her action. Coupled with it, her conduct in not disputed that letter, but for in her reply notice under Ex.A.3, dated 25.03.2001 to the notice, he cause issued on 12.03.2001 which is more than 33 months after the letter in July, 1999 speaks volumes on her voluntary writing. From this, it can be safely concluded that the letter is a voluntary outcome and not of any force or duress and such a defence is nothing but an after thought to get over if possible. As such, it is relevant to appreciate the contents of the letter. She

cautioned him not to tear out the letter with a request to read fully and preserve as it relates to her life. She stated that she could have disclosed the fact before their marriage which she could not for she was not given liberty by her parents in their compelled her in performing the marriage with him and from which without even affection or mind towards him but under the compelling circumstances she agreed and in fact, she fixed the date for her putting an end to the life that was not fructified and she was constrained to marry as even her parents knew that she was liking someone who is not the petitioner, they compelled her. However, her conscience did not permit to live with him by adjusting as husband and that was the reason for her altercating with him even to his displeasure. She also stated that he did not give her the proper place in his heart, that also his fault which she could realize from her reading his diaries and that she is not such a cruel as he depicted therein. She stated that she could know what is good or bad having that consciousness and thereby even by her hurling words or abuses she was accusing him and troubling him mentally, after that altercation she could be realizing, but by no use. She stated that instead of her, if some girl was in his life as wife that girl could have been a lucky fellow and that luck is not in her as she has no liking towards him and that she has determined to live apart to him lonely by leaving him and his company and her father did not even heed her and he was suffering a lot on seeing her and from knowing her mind. Though realized a lot in her father's words that it is only to satisfy his words she married the petitioner, however, suffering and even her father was suggesting to adjust and not to spoil the life, but she has no any hopes or aims to live with him. It is not feasible because of different mentalities of them to adjust and live together and she has no any objection for his marrying a girl to his liking.

12. She further stated in the Ex.A.1-letter that while she was studying intermediate, she was liking a boy that was informed him many a time including the name of that boy Balu of her class and the fact of her

liking that Balu even though she tried to convey to the petitioner, she could not, but her father noticed that letter from her books and therefrom her father by suspecting her, used to follow her including to the examination hall for writing exams. That she even consumed sleeping pills having felt ashamed, however, she was saved by admitting in a hospital and later she stayed with her maternal grandmother for sometime, having been not able to move before her father. It was later and all of a sudden, her parents came to her maternal grandmother's house and informed about fixation of the marriage with the petitioner and even she wept like anything and by refusing the proposal; they did not heed and her father even threatened to do away his life, if she likes said Balu or further opt to meet that Balu and from which she could not meet him. However, in the last days of the college said Balu, on knowing about the marriage fixed with the petitioner, expressed his feelings by congratulating with weeping face and that was ringing in her mind all through and even date for her ingratitude towards Balu. As there is nobody to whom she can express her feelings, thereby she has been writing this letter to the petitioner to understand her. That if he is still not able to understand her, the only thing remains to her is to put an end to her life as she is not interested in deceiving him and she is constrained to write this letter as her parents tried to compel her to join him, which she is not liking. Hence, asked him to leave her to lead lonely life. She further cautioned him not to take the contents of the letter written by her as a childish one, but serious.

13. A reading of the letter clearly shows that it is nothing but a constructive desertion which is part of the desertion defined under Section 13(1)(ib) of the Hindu Marriage Act as per the settled expressions in **Bipinchandra Jaisingh Bhai v. Prabhavathi** that was followed in **Lakshmi v. Meena** that was followed and reiterated in **Samar Ghosh v. Jaya Ghosh**. As the desertion without a reasonable cause and without consent or against the wish and with the essential conditions of the factum of desertion with an intention to

bring cohabitation permanently to an end with *animus deserendi* is made out from the contents of the letter for putting an end to the marital life. Thus, same is nothing but with permanent *animus deserendi*, from the inception of marriage to say even after that letter of July, 1999 and whatever, the so called living together in April, 2000 according to her version in the reply notice as well as counter averments at Konkuduru no way disrupts that *animus deserendi*, but for pleading sake to defend the case if not of her own version of it is in obliging her parents. As the contents of letter are crystal clear that without any affection or love and with no mind to live, she simply allowed her husband to tie the tali around her neck only to oblige her father. Same is not only desertion (in particular constructive) and contents of the letter also cause mental cruelty for any husband with in society to digest; besides the same shows the marriage is broken down irretrievably like a broken mirror not possible to reunite with past glory.

14. Further even coming to the other acts of mental cruelty, she claimed that the petitioner-husband demanded property and dowry and the respondent's parents obliged to give to meet such demand, that was the version introduced only through the reply notice and counter and in evidence of RWs.1, 2 and 3 supra. Importantly if at all there is any truth, Ex.A.1- lengthy letter of her of 3 pages must contain that fact even with a little whisper, which is not there. As Ex.A.1 is silent regarding any dowry or demand for dowry, much less for settlement of property or his any mind to go for another marriage to get rid of her for having any monetary benefit; said evidence of respondent cannot be given credence in the light of the Ex.A.1-letter contents for there is nothing to say it was obtained by coercion or fraud or against her will.

15. Further even regarding the acts of cruelty pleaded by the petitioner, from Ex.A2 it reveals the cruel conduct of the respondent

towards the petitioner as in her Ex.A.1-letter she categorically admitted that she was abusing him or accusing him and insulting him and subsequently realizing and feeling pity. It is not the intention that is the criteria of the opposite party but the conduct whether constitutes mental cruelty or not. That very letter contents referring of her abuses and insults is nothing but mental cruelty. It is also in making up her mind by disclosing that she loves one Balu, her classmate since prior to the marriage with petitioner and she still likes said Balu, which is nothing but mental cruelty. As no prudent husband could able to adjust and live with such a woman expressing that she has no place to him and she has a place to some other male. The cruelty do not require with such a rigor of danger to the life or health or unable to live. It all depends upon the facts and circumstances as to a particular act is mental cruelty or not from the standard of life and way of understanding the things. Ex.A1-letter executed by her giving out all these things, which no prudent person could without mental sufferings bear with to his knowing, same cannot be regarded as a mere wear and tear, but cruelty. The expressions of the Apex Court in **Naveen Kohli v. Neelu Kohli** and **Samar Ghosh**(8th supra) laid down in this regard is suffice to conclude that the contents of Ex.A.1 letter itself establish that there is not only constructive desertion but also mental cruelty.

16. Coming to the expressions placed reliance by the respondent-wife, what was laid down in **Bodapati Umameheswari** (1st supra) by this Court is that burden is on the spouse pleading cruelty as a ground for divorce. No doubt once, the letter Ex.A.1 written by her admittedly showing that there is nothing to believe her version of obtained under duress or coercion, that itself constitutes cruelty. No doubt in **Vishnu Datt Sharma** (4th supra) what was held is the couple living apart or the marital life broken down irretrievably does not constitutes a ground for dissolving the marital life under Section 13 of the Hindu Marriage Act. Here when the constructive desertion and cruelty are established, even irretrievable break down or couple living

apart for long time by themselves not grounds for divorce; as laid down in **Naveen Kohli** (9th supra) the same cannot be ignored by the Court, for those being the additional facts to substantiate cruelty and desertion. The other decision of **Gajjala Rajeswara Reddy** (5th supra) as to giving a complaint under Section 498-A IPC by the wife against the husband and his relatives that constitute cruelty, is not a subject matter of the lis herein to consider the same any further. The other decision of the Apex Court in **Darshangupta** (2nd supra) is regarding the mental disorder of the other spouse in seeking divorce. Here it is not that case. There, on facts to say that wife's behaviour was erratic that constitutes cruelty, what was laid down by the Apex Court was there was no independent witness examined, but for self-serving testimony of husband. Here in this case, besides the PW.1's evidence, there is also the evidence of PWs.2 and 3 apart from Ex.A.1 letter written by the respondent-wife, the contents of which discussed supra.

17. Having regard to the above, the husband is entitled to decree of divorce on the ground of cruelty and constructive desertion subject to the liability to permanent alimony and the trial Court was not correct in dismissing the petitioner for divorce.

18. No doubt the evidence on record shows that the husband is an officer in the State Bank of Hyderabad and there are no burdens to him, but for his mother, there are house and other landed properties to him at his native place and thereby it is the duty to provide permanent alimony under Section 25 of the Hindu Marriage Act for survival of the wife, while obtaining decree of divorce and the legal position is very clear, particularly from the expressions of this Court in **Jayakrishna Panigrahi v Smt Surekha Panigrahi and Gopala Krishna Surapaneni v Smt Anuradha Surapaneni** that is the duty

of the Court without even asking by wife while granting decree of divorce or other reliefs by putting an end to marital life to provide permanent alimony for her survival. Having regard to the above and by considering the means of the parties it is just to fix permanent alimony to the wife of Rs.25 lakhs., which he is to pay within six months.

POINT No.2:

19. In the result, the appeal is allowed dissolving the marriage between the petitioner and respondent performed on 01.02.1998 by setting aside the order dated 08.12.2004 in O.P.No.58 of 2001 on the file of Senior Civil Judge, Ramachandrapuram. The appellant-husband is directed to pay to the respondent-wife a sum of Rs.25 lakhs (Rupees twenty five lakhs only) towards permanent alimony, either in lumpsum or in installments within six months from today without any liability of interest. However, if he fails to pay the same, the respondent-wife is entitled to execute and recover the same together with interest at 12% per annum from this day till realization. As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed. No order as to costs.

R. SUBHASH REDDY, J

Dr.B.SIVA SANKARA RAO,J

1ST April, 2015

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HON'BLE SRI JUSTICE R. SUBHASH REDDY

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HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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