

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.563 of 2005

-

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

This Civil Miscellaneous Appeal, under Section 28 of the Hindu Marriage Act, 1955 (for brevity "the Act"), is filed by the appellant against the judgment and decree dated 30.04.2005 in O.P.No.126 of 2002 passed by the learned Additional Senior Civil Judge, Narsaraopet, Guntur dismissing the petition filed by the appellant herein under Section 13(1)(ia) and (ib) of the Act, seeking to pass a decree of divorce dissolving the marriage between the petitioner and the respondent on the ground of cruelty and desertion.

2) Appellant-husband is the petitioner and respondent-wife is the respondent in O.P.No.126 of 2002. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in the O.P. before the Court below.

3) The undisputed facts are that the marriage of the petitioner with the respondent was performed as per Hindu religious rights, customs and usage. After the marriage, they blessed with two female children by name Pooja and Teja.

4) The allegations of the petitioner are that, the respondent after giving birth to the second child, behaved in a most irresponsible manner by abusing the petitioner and his parents by not attending the household duties, that she used to go to her parents' house without informing either to the petitioner or to his parents, used to abuse the petitioner before his relatives and also threatened him that she will lodge false cases against him and his parents, that the petitioner

number of times get back the respondent from her parents' place and requested her to mend her ways and to lead happy marital life, but in vain that she used to torture and cause mental agony to him. The petitioner further alleged that finally on 15.03.2000 the respondent left the company of the petitioner without giving information to anybody and when the petitioner tried his level best through mediators as well to get her back, she bluntly refused to come and join. Therefore, he filed the present O.P. seeking to dissolve the marriage.

5) In the counter affidavit filed by the respondent-wife, while denying the allegations made by the petitioner-husband including as to the date of marriage was on 09.06.1993 and not on 16.07.1993, it is contended that the petitioner and the respondent went to the parents' house of the respondent on 04.01.2002 for Sankranti festival and after Sankranti festival, the petitioner neither took back the respondent nor allowed her to join him, apart from threatening the respondent that she will be beaten to death if she comes to join him. She further averred that, since the petitioner is a lorry driver, he is away from the house for about 20 days in a month because of his duties and he never cared about the needs and necessities of the respondent, as well as the children, that all the income he used to spend for his bad vices apart from frequently resorting to violent acts against the respondent and is guilty of marital obligations without even providing maintenance to the respondent and the two children in praying to dismiss the petition.

6) Before the Court below, the petitioner was examined as P.W.1, cause examined one Satyanarayana as P.W-2 and also relied upon the documents Exs.A-1 to A-3. On behalf of the respondent, she herself was examined as R.W.1 and also cause examined R.Ws 2 to 4 and got marked Ex.R-1 order copy in M.C. No.8 of 2003 on the file of I Additional Judicial Magistrate of the First Class, Narsaraopet.

7) The Court below, while referring to the evidence on record, held that the petitioner failed to adduce any satisfactory evidence to establish his contention and on the other hand the respondent

proved that she did not desert the petitioner for a continuous period of two years and dismissed the petition.

8) In the present appeal, the petitioner contended that the allegations made by the respondent in her counter themselves constitute cruelty as the respondent failed to establish such allegations and the Court below dismissed the O.P only on assumptions and surmises but not by appreciation of the evidence on record that was adduced by him, that the lower Court erred in holding that it is mandatory to issue prior notice to the respondent and also necessary to file petition earlier for restitution of conjugal rights, which in fact not mandatory for filing divorce petition, that the lower Court ought to have taken into consideration of the cross-examination of R.Ws 1 to 4, wherein it is categorically admitted by them about the desertion for a continuous period of not less than two years prior to filing of the petition and prayed to allow the appeal by setting aside the order passed by the learned Additional Senior Civil Judge, Narsaraopet.

9) Whereas it is submitted by the learned counsel for the respondent/wife that, the trial Court rightly considered the evidence on record and came to the conclusion supported by reasons for no case made out on the ground of cruelty or desertion for the husband to seek divorce and against said dismissal order, there is nothing to interfere by this Court even by re-appreciation of the evidence afresh. Hence to dismiss the appeal.

10) Having heard learned counsel for both the parties, we have perused the material on record.

11) Now, the points that arise for consideration are that

- i. Whether the respondent-wife is guilty of acts of cruelty towards the petitioner-husband and if so, the petitioner-husband is entitled to decree of divorce on the ground of cruelty, if any also on the any ground of desertion and if so, whether the dismissal order of the lower Court on no case made out for divorce is unsustainable and requires interference by this Court while sitting in appeal and if so

with what observations?

ii. To what result?

12) From the pleadings on record, it is clear that the petitioner/husband has filed a petition for divorce, both on the ground of cruelty and desertion. So far as cruelty is concerned, it is not the case of the petitioner that the respondent behaved cruelly after giving birth to the second child in the year 1997. Admittedly their marriage was performed in the year 1993. As per his version itself, they lived happily for a period of four years. Further, as per the evidence of P.W-2, father of the petitioner, they lived separately and he does not know the family affairs of the petitioner and respondent. Thus, said evidence is no way helpful to the case of the petitioner. To prove the allegations of cruelty of the respondent against the petitioner, besides no specific instances as to acts of cruelty pleaded, even regarding general conduct of respondent towards him no independent witness was examined by the petitioner and hence the petitioner failed to establish his case regarding cruelty.

13) So far as desertion is concerned, according to the case of the petitioner, the respondent left his company on 15.03.2000 and the petition for divorce was filed by him in the year 2002. His further case is that he made efforts to take her back and all his efforts became futile. To prove that the respondent left his company, no independent witness was examined saying that when she left his company. Further more, the respondent examined R.Ws 2 and 3 who are independent witnesses supported the evidence of R.W-1 saying that the respondent went to her parents' house in the month of January, 2002 only.

14) Merely because there is an inadvertent version in saying as 2000 instead of 2002 for the husband having sent the wife for Sankranthi and latter he did not allow her to join, the petitioner cannot take any advantage of it a stray sentence in the deposition without reading the evidence as a whole say she left his company in January, 2000, for not his case that she left his company in January,

2000 but for saying she left his company against his will or without consent on 15.03.2000 apart from the fact of he did not even issue any notice demanding her to join if really she left his company in March, 2000 to give any credence to the version. Further, the subsequent event covered by order in M.C. No.8 of 2003 under Ex.R-1 speaks no desertion on the part of the respondent-wife. Thus, but for *ipsi dixit* version of him as P.W-1 (for his father P.W-2 evidence no way helpful) there is no worth evidence he could adduce apart from the fact remains the wife and two daughters living on the mercy of her parents for no means, from his refusal to their joining. Further more, there is nothing to say that the petitioner made efforts to get the respondent back and even there is no evidence to get his children to his fold by filing any petition in any appropriate forum. This itself shows the petitioner is at fault to get his wife and children to his fold. Therefore, the petitioner could not prove either desertion by the wife or cruelty against him.

15) Having regard to the above, the trial Court is right in its conclusion supported by sound reasons in dismissing the petition filed by the petitioner holding that the respondent never deserted the petitioner nor behaved cruelly against the petitioner.

POINT No.ii:

16) In the result, the Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, in this appeal shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

1st April, 2015

ksh