

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

FCA No.140 of 2005

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

This appeal is filed, by the Appellant/Respondent(wife), under Section 19 of the Family Court Act, aggrieved by the order and decree dated 24.07.2003 in O.P. No.241 of 2002 passed by the learned Judge, Family Court, Hyderabad granting divorce by dissolving the marriage between herself and her husband-respondent herein. The respondent/husband filed the aforesaid O.P before the Family Court, under Section 13(1)(ia) of the Hindu Marriage Act, seeking to dissolve the marriage between himself and his wife-appellant herein claiming that the marriage between himself and his wife took place in Hyderabad on 27.06.1998 and out of their wedlock, they were blessed with one male and two female children, that his wife frequently used to visit her parents house without informing him, that since 1997 she disregarded him besides caused monetary loss to him and mental cruelty by ill-treating him, that on 13.12.2001 she left his company and did not join him, that later she started moving with other persons in a suspicious manner and by consuming liquor, that when he got issued a legal notice, though she received, did not respond.

2. The divorce petition was opposed by the wife as respondent therein with counter while denying and disputing truth of the petition averments supra, with contest that after marriage and despite children in the wedlock the petitioner-husband was ill-treating including to meet the demands for additional dowry and she was

driven out of the house with children on 13.12.2001 and did not allow despite efforts, that she is ready to join and she also issued reply to the notice and he is not entitled to divorce,

3. After trial and hearing on both sides on merits, the trial Court granted divorce with reference to the evidence of P.W.1, R.W.1 and Exs.P.1 to P.5.

4. The contentions in the grounds of the appeal as well as oral submissions by the learned counsel for the appellant-wife are that the Court below erred in not appreciating the evidence on record and with comment that appellant-wife did not adduce any evidence to substantiate her case, that the Court below erred in holding that the respondent-wife did not elicit any information contradicting the case of the petitioner-husband and as if no reply given to the notice; that the Court below failed to appreciate the well settled principle of law that the petitioner-husband has to establish his case on his own strength and not to rely on the weaknesses of the defence of the appellant and for no grounds to dissolve instead of dismissing, hence to set aside the order and decree granting divorce by the trial Court, by allowing the appeal restoring the marital tie.

5) Perused the material on record. The parties herein are referred to as they were arrayed before the trial Court for sake of convenience.

6) Now the points that arise for consideration are:

1) Whether the order and decree dated 24.07.2003, passed in O.P.No.241 of 2002 by the learned Judge, Family Court, granting decree of divorce is unsustainable and requires interference by this Court while sitting in appeal and if so, with what observations?

2) To what relief?

Point No.1:

7. It is not in dispute that the marriage between the petitioner and the respondent took place on 27.06.1998 and out of their wedlock, they were blessed with one male and two female children. The divorce

granted is mainly on the ground of cruelty on the part of the wife towards the husband in their matrimonial life. It is his specific case that even after the marriage while they were living together she left his company without his consent or information on 13.12.2001 and also thereafter she was moving with other male persons in highly suspicious manner and even consuming liquor and with all these facts, he issued notice to her but she did not choose to reply. The Ex.P.1 is the said registered notice dated 12.01.2002, sent under Ex.P.2 dated 13.01.2002, that was cause returned by her under Ex.P.3 and even he issued notice for second time under Ex.P.4, dated 31.01.2002, sent on 01.02.2002, under Ex.P.5; she did not choose to controvert these facts of service but for saying issued reply. Even claimed issued reply, she did not choose to file reply which speaks that having been served admittedly, if issued reply, she should have filed the same and non filing substantiates non-giving reply and but for no defence, she could have issued the reply and proved it. Even coming to her attribution of he is under the influence of another lady and was also harassing to meet the demands for additional dowry, there is no cross-examination of P.W.1 in this regard or to say it is he that send her out on 13.12.2001 against his evidence of she left his company on 13.12.2001. Had there been any truth on the part of the appellant-wife, she could have explained what made her not to give reply to the said notice despite of the facts shown by him. Even she did not choose to cross-examine him, he deposed all these facts in his chief examination in support of his pleadings also with reference to Exs.P.1 to P.5. What she suggested in the cross-examination is he is paying only Rs.16,000/- per month to her and the children towards maintenance and nothing on the substratum of the evidence regarding cruelty. It is therefrom, the trial Court for no worth cross-examination of P.W.1 of the facts of cruelty proved for no worth evidence on her side including from her deposition as R.W.1, held the cruelty on the part of the wife towards husband is established. Thus, from perusal of the entire evidence by re-appreciation supra, even for this Court while sitting in appeal there is nothing to interfere but for to dismiss. Accordingly, Point No.1 is

answered.

Point No.2:

8) In the result, the appeal is dismissed. However, without prejudice to the right of the appellant-wife to file any separate proceedings for permanent alimony or for any enhancement of maintenance. Consequently, miscellaneous petitions, if any, pending in the appeal stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

April 02, 2015

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