

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

FAMILY COURT APPEAL No.115 of 2005

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JUDGMENT : (Per Justice R. Subhash Reddy)

This appeal is filed under Section 19 of the Family Courts Act, by the petitioner in O.P.No.120 of 2003, on the file of learned I-Additional Senior Civil Judge, Ranga Reddy, aggrieved by the order and decree dated 22.06.2004.

2. By the aforesaid order, the civil Court has dismissed the petition filed by the appellant herein under Section 13(i)(ia) of Hindu Marriage Act, 1955, seeking dissolution of his marriage with the respondent, performed on 07.12.2000. The aforesaid petition is filed with the following averments;

3. The petitioner was married to the respondent on 07.12.2000 at Dilsukhnagar, Hyderabad and they were living at his parents' residence from the time of marriage. As the respondent is a postgraduate, she developed superiority complex and started ill-treating, insulting and criticizing the petitioner, who is an I.T.I. holder working in Parle International Group of Companies. Respondent was creating problems on each and every small thing, creating unrest in the family and she used to stay at her parents' house for weeks together without informing the petitioner. Her parents never disclosed about her attitude nor advised her properly how to behave with in-laws. Respondent started working as a Teacher in Siddhartha Public School, Chintal and has become more ambitious to go to abroad. Though the petitioner's father was suffering with cancer, even then,

the respondent used to pick up quarrels on small meaningless issues and spoil the atmosphere in the house. Respondent was always trying to go to her parents' house on one pretext or the other and she was also not cooking food either for petitioner or for his parents and was indifferent towards his parents. In spite of the fact that the father of the petitioner was suffering with chronic cancer, she was insisting the petitioner to come out of the house and stay separately. It is alleged that due to mental tension and harassment, life span of petitioner's father was reduced and ultimately ended on 11.11.2001. It is further pleaded that the respondent left the petitioner on 20.06.2002 without informing him and after intervention of elders and well-wishers, again joined the company of the petitioner on 14.08.2002. When further problems arose in their house, petitioner has decided to stay separately along with the respondent, as such, on 20.08.2002, the petitioner along with respondent, started living separately and in spite of the same, on 21.08.2002, respondent abruptly left to her parents' house without any information. Further pleading that the petitioner is aged about 33 years and is in necessity of his wife's company, sought the relief of dissolution of marriage on the ground of cruelty, both physical and mental.

4. Respondent-wife has filed counter affidavit. In the counter affidavit, while denying the various allegations made by the petitioner, it is stated that she is only a B.Sc. graduate and is obedient and good behaving woman and with the consent and encouragement of the petitioner, she worked as Teacher at Siddhartha public school, Chintal for about 5 months. It is stated that the petitioner took a premises on rent on 20.08.2002 and by keeping the respondent in such house, went away to his parents' house and did not turn up upto 11 p.m., and till such time, respondent had to stay without food and the petitioner told her that he will stay with his mother and sister and will come once in four days and insisted for her signature on a blank white paper, for which, the respondent had refused. The petitioner never came to her parents' house and on the other hand, parents of respondent went to the house of the petitioner and

requested him to take back the respondent to his house, but the petitioner and his mother did not care to heed to their request. Subsequently also, her sister, sister's husband and mother went to the house of petitioner and requested him to take her back to his house and to live peacefully, but the petitioner and his mother have not acceded to such request. Further pleading that she is very anxious to lead a peaceful and happy marital life with the petitioner, it is further stated by the respondent that at the time of marriage, her parents gave to the petitioner an amount of Rs.1,50,000/- for doing business and also 15 tulas of gold ornaments, which were taken by the petitioner. Having not satisfied with the same, the parents of petitioner were harassing the respondent to bring more money from her parents' house and as her father was only a pensioner and has already spent lot of money, he was not in a position to meet their demand. Further pleading that respondent is ready and willing to join the company of the petitioner to lead a happy marital life, prayed for dismissal of O.P.

5. Before the trial Court, petitioner was examined as PW-1 and his mother was examined as PW-2. Respondent was examined as RW-1 and her father was examined as RW-2. Having considered the oral evidence on record, the Court below has recorded a finding that no case is made out to accept the plea of the petitioner to dissolve the marriage on the allegation of cruelty.

6. In this appeal, it is contended by Smt.B.Kavitha Yadav, learned counsel for petitioner that the respondent has left the company of the petitioner on 21.08.2002 and since then, they are not staying together, as such, their marriage is irretrievably broke down. It is further submitted that inspite of the fact that cruelty is clearly proved from the oral evidence, the civil Court has erroneously dismissed the petition filed by the petitioner/appellant. In support of her contentions, learned counsel for petitioner has placed reliance on the judgments

in **Samar Ghosh Vs. Jaya Ghosh** and in **Vidhya Viswanathan Vs. Kartik Balakrishnan**.

7. On the other hand, it is submitted by the learned counsel for respondent that in this case, there is no specific pleading with regard to any instance which constitute cruelty and in the absence of any foundation in the pleadings and evidence to that effect, the plea of the petitioner for dissolution of marriage on the ground of cruelty, cannot be accepted. It is submitted that the respondent and her parents though made several attempts, she was not allowed to join the company of the petitioner, only at the instance of the petitioner, as such, it cannot be said that her marriage was irretrievably broke down so as to grant decree of divorce on the said ground. It is further submitted that as much as the O.P. is filed seeking dissolution only on the ground of cruelty, in the absence of any evidence to substantiate such plea, the petitioner is not entitled for decree of divorce. It is further submitted that whether any act of the spouse will constitute cruelty in a given case, is to be considered with reference to the allegations and evidence on record, and in the instant case, there is no such allegation and evidence to prove the same.

8. Even as per the case of the petitioner, respondent has left his company on 21.08.2002 and the O.P. was filed in the year 2003. From the pleadings on record, it is clear that the relief of dissolution of marriage is sought only on the ground of cruelty. Petitioner is examined as PW-1 and his mother is examined as PW-2, but no other independent witness is examined to support the case of the petitioner. The oral evidence of PWs.1 and 2 show that the allegation against the respondent is that she treated the petitioner with cruelty and left to her parental home without informing the petitioner and she is not interested in joining the petitioner. It is the case of the petitioner that in view of the long dis-association, the love and affection existed between them is lost, as such, on the ground of cruelty, he seeks

dissolution of marriage. Even PW-2, who is the mother of the petitioner, has deposed on the same lines as PW-1. Contra to the same, there is evidence of the respondent as RW-1 and of her father as RW-2. It is their specific evidence that though the respondent was treating the petitioner and his parents with love and affection, having not satisfied with the amount of Rs.1,50,000/- given at the time of marriage in addition to 15 tulas of gold jewelry, the petitioner and his family members were demanding more money from her parents and when she expressed her inability to comply with their demand, she was tortured mentally and physically and she had to bore such harassment in the interest of family life, and inspite of the same, there was no change in the behaviour of petitioner. Except a vague allegation that respondent developed superiority complex having regard to her higher educational qualifications, no specific instances are pleaded on the said aspect. Mainly the plea of cruelty is based on the allegation that the respondent was leaving the company of the petitioner without informing him and that she used to stay with her parents for indefinite periods. But at the same time, it is the specific case of the respondent that her father, sister and sister's husband went many times to the house of petitioner and requested to take her back, but their requests were not acceded to by the petitioner. In view of such oral evidence on record and in the absence of substantiating the evidence of PWs.1 and 2 with the evidence of any independent witness or with any other documentary evidence, it is not possible to accept the plea of the petitioner that the respondent had stayed with her parents on her own for indefinite periods, depriving him of her company, so as to constitute cruelty. It is well settled that merely because they are living separately, no inference can be drawn in favour of the allegation of petitioner with regard to cruelty, but such cruelty must be proved with cogent evidence. From the evidence of RWs.1 and 2, it is clear that as the petitioner was demanding to get further dowry and as they could not arrange such additional amount, the respondent was being harassed by the petitioner. From such evidence on record, and further, in view of the specific evidence of respondent that she has made attempts to join the petitioner by

sending her father, sister and sister's husband to the petitioner with a request to take her back to his company, the plea of the petitioner that the respondent used to left to her parents' house on her own and used to stay there for indefinite periods, cannot be accepted.

9. Coming to the judgments relied on by the learned counsel for petitioner, though in the judgment in the case of **Samar Ghosh** (1 supra), it is held by the Hon'ble Supreme Court that from long periods of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair, but at the same time, in the very same judgment, the Hon'ble Supreme Court has held that mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty. In the present case, though there is allegation of physical cruelty, there is absolutely no evidence on record to that effect, and so far as mental cruelty is concerned, we are of the considered view that there is also no evidence on record to accept the same. In view of the nature of allegations, it is a clear case where there are trivial irritations and quarrels, which happen in day-to-day life, but nothing more. Coming to the other judgment in the case of **Vidhya Viswanathan** (2 supra), the Hon'ble Supreme Court has held that refusal by wife to have sexual intercourse for long time amounts to mental cruelty and the husband is entitled to decree of divorce. But in the case on hand, there is no such allegation by the petitioner, and in that view of the matter, both the judgments would not render any assistance to the case of the petitioner, having regard to the pleadings and evidence in this case. In view of the reasons recorded by the Court below in the impugned order, we are of the view that the Court below has correctly appreciated the evidence on record and has arrived at just conclusions based on the evidence on record and no case is made out, warranting interference.

10. For the aforesaid reasons, the appeal is devoid of merit and it is

accordingly dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

DR.B.SIVA SANKARA RAO, J

15th April 2015

ajr