

**HONOURABLE SRI JUSTICE R.SUBHASH REDDY
AND
HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO**

C.M.A.No.2100 of 2004

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

This is an appeal maintained under Section 28(4) of the Hindu Marriage Act, by the unsuccessful petitioner-husband by name Mudumba Purushothama Chary in O.P.No.2 of 2003 on the file of the Senior Civil Judge, Nalgonda, against the dismissal judgment dated 27.02.2003 on his application to dissolve the marriage with respondent-wife on ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act.

2. The case of the petitioner-husband in O.P.No.2 of 2003 on the file of the Senior Civil Judge's Court, Nalgonda, in brief is that initially his marriage with one Janaki was performed as per Hindu customs in the month of January, 1980 and said Janaki died later after blessed with two female children by names Kalyanalakshmi and Srinayaki, that the petitioner-husband married the respondent by name Thirumalalakshmi herein in the year 1980 as per Hindu customs and out of their wedlock, a son by name Dasarathi was born to them. The petitioner further averred that the respondent is adamant and no respect towards him and was also used to abuse his younger brother in awkward language and due to her adamant nature, he left his children through first wife with his parents at Huzurnagar, that the petitioner is working as a teacher for Telugu subject in Geetha Vignana Mandir High School at Ramagiri and he is interested in music which as disliked by the respondent, she abused him for his hobby of cultivating music and assaulted the petitioner and threw away his musical instruments from the house, that ultimately on 11.11.1987 the respondent-wife left the house of the petitioner along with his son without any reason by picking up quarrel and was staying with her parents at Suryapet, that the petitioner's efforts through his brother-in-law by name Venkatachary to convince respondent-wife to join the petitioner have

become futile. It is also averred that the respondent-wife came to his house in his absence took away the household articles and cooking vessels and later filed M.C.No.10 of 1990 on the file of the learned Judicial Magistrate of First Class, Suryapet, and obtained maintenance of Rs.400/- her and Rs.250/- to her son by its order dated 02.02.1993 and in the revision preferred by him vide C.R.P.No.1947 of 1994 in which a settlement was arrived at by granting Rs.300/- per month to her and Rs.200/-per month to her minor son as per award dated 27.08.1995, that the respondent filed another claim for maintenance in O.S.No.146 of 1998 on the file of the learned Junior Civil judge, Suryapet in which an amount of Rs.1,500/- per month to her and Rs.1,000/- per month to her son was awarded, that the petitioner filed a petition vide O.P.No.30 of 1990 on the file of the learned Senior Civil Judge, Nalgonda for grant of divorce which was dismissed as withdrawn subject to payment of the interim maintenance therein and till then and by all these. It shows the respondent-wife is not interested in joining him for marital life and entitled to divorce on the grounds of cruelty and desertion therefrom.

3. Counter filed by the respondent-wife before the lower Court while denying the above averments in opposing the claim of divorce, with further contentions that her son Dasarath is a major studying engineering, that the allegations show that she was adamant or she was abusing him or even his brother in awkward manner or manhandling him or she did not allow the children of first wife to live with him which made him to drop them at his parents are false so also he could not pursue his hobbies of music or she threw away instruments of music or households utensils or books or he could not complete his post-graduation study from her conduct are all false, it is averred that he never treated her with love, he was always keeping her in a room by closing doors from outside and was even physically assaulted her by beating and kicking and he was keeping her in a room by locking it whenever he left home without even food for days together till his return, even her son Dasarath was kept by him with

his brother's wife but she with great difficulty got back and she also looked after well the two daughters of the first wife of the petitioner, but the petitioner ultimately driven her from the matrimonial home and the respondent went to her in-laws house at Huzurnagar where her father-in-law even permitted her to study in their house but her mother-in-law did not allow to continue at Huzarabad in their house which made her to go back to her parents as no other go, and her parents' efforts for her joining him back were not fruitful. She further contended that the allegations of she took away all her belongings and cooking utensils etc, before filing of M.C.No.10 of 1990 or O.S.No.147 of 1998 or she has not to live or he addressed a letter to one Venkatachary to convince her or Venkatachary tried to convince her also false. She contends that he forcibly made her to undergo tubectomy operation and she is prepared to join him despite all these. Hence, to dismiss.

4. It is impugning the same, the present appeal is filed by the unsuccessful petitioner/appellant stating that the Court went wrong in not believing the evidence of P.Ws. 1 to 3 which establishes the cruelty and desertion against him by the respondent-wife and non-filing of the restitution of conjugal life claimed by her also substantiates the grounds of desertion if at all she is interested to live and there is no evidence even from the respondent but for her oral testimony as R.W.1, to disprove the case of the petitioner-husband, was not properly appreciated by the lower Court despite cruelty or desertion which made out. Hence, to allow the appeal dissolving the marriage.

5. Heard both sides.

6. Perused the material on record. The parties hereinafter are being referred to as they are arrayed before the Court below for sake of convenience.

7. Now the points that arise for consideration are:-

1. Whether the dismissal order in O.P.No.2 of 2003 filed by

the petitioner-appellant on the grounds of cruelty and desertion against respondent-wife, dated 27.02.2004 is unsustainable and requires interference by this Court while sitting in appeal, if so, the petitioner-appellant is entitled to divorce either on the ground of cruelty or on the ground of desertion or both and with what observations?

2. To what relief?

Point No.1:

8. Among the Exs.A.1 to A.3 no other than the petition, counter and withdrawal order in O.P. 30 of 1990 filed by the husband against the wife having sought for divorce and withdrawn no way established the case of the petitioner-husband in this divorce O.P. regarding cruelty much less desertion. Even taken from the evidence of the husband as P.W.1 with reference to the allegation of the wife herself deserted him having left the marital home on 11.11.1987 concerned, having filed subsequently for the existing cause of action O.P.No.30 of 1990 in seeking divorce and after contest while pending from the counter filed by the wife in opposing the same, the husband withdrew the divorce claim. When undisputedly it was dismissed as withdrawn, it tantamounts to waiver of all rights accrued as on the date of withdrawal. Even for argument sake of the so called acts of desertion or cruelty from she allegedly left the home on 11.11.1987 and ill-treated earlier that is with any little support from the mouth of P.Ws.2 and 3, for which divorce O.P. admittedly filed and when withdrawn thereafter, while under contest without inviting to decide the same on merits, it tantamounts condoning of the acts prior to that and thus those no way available to him. Even coming to the subsequent so called acts of cruelty and desertion, there is no even any scrap of paper from his side demanding her to join him and willing to take to his fold. It is undisputedly so far as filing of claims for maintenance under Cr.P.C. and later for the efficacious civil remedy of maintenance by the wife and the minor son, awarded against him on contest and those were also settled either the criminal maintenance in the revision as such before the High Court or the

civil suit for maintenance through Lok Adalath awarded vide dated 23.09.2001 and as such, there is no any act of cruelty or desertion therefrom. So far as the subsequent conduct is concerned, there is no any little whisper much less as to any particular act of any particular date thereafter tantamounts to cruelty, for his seeking cruelty as a ground in the O.P.No.2 of 2003, either in the pleadings or evidence of him as P.W.1, much less through P.Ws.2 and 3, leave about nothing even elicited in his favour against the R.W.1-wife from her cross-examination. The proof required for desertion even though no specific provision for desertion quoted for but for stray averment in the divorce petition with averments in the evidence concerned, there is nothing to show either from her filing civil maintenance case or criminal maintenance case that she got any permanent animus to desert him much less such permanent *animus deserendi* for continuous period of two years till the date of filing of the present O.P. for divorce, required to be made out in the pleadings and further to substantiate it, evidence is totally lacking in this case. Even before lower Court in her counter the wife says that she is always ready and willing to join him and the efforts made by her through her parents were in vain so also that is the evidence of her as R.W.1 including from the cross-examination of P.W.1-petitioner.

9. Having regard to the above, there is no case made out for cruelty from any little bickerings or wear and tear does not constitute acts of cruelty to seek divorce or to put an end to the marital tie, that too, when it is the duty of the ideal couple to gloss over the differences and to see that small bickerings will not lead to creating gulf in their relation to make it disunion like a broken glass. It is needless to say by the time the divorce case covered by the impugned order filed by the husband vide O.P.No.2 of 2003, he has shown aged about 52 years and of his wife 37 years and in the appeal filed in the year 2004 shown his age about 56 years. It is to say he is now more than 67 years and his wife is about 56 or 57 years and hoping that wisdom prevail in them to unite and for no grounds either

on cruelty or desertion for his entitlement to seek divorce in particular for nothing illegality or impropriety or irregularity in arriving the conclusion by the lower Court with reasons. The trial Court, in fact, by scanning the evidence in this regard by appreciation of the facts and law when came to the right conclusion, for this Court while sitting in appeal there is nothing to interfere. Accordingly, Point No.1 is answered.

Point No.2:

10. In the result, the appeal is dismissed with no costs. Consequently, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

JUSTICE R.SUBHASH REDDY

Dr. JUSTICE B. SIVA SANKARA RAO

Date:18-02-2015

Vvr.