

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

F.C.A. Nos.49 AND 37 OF 2010

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COMMON JUDGMENT:(Per Hon'ble Sri Justice A. Shankar Narayana)

Since both these appeals arise out of the common order, they are being disposed of by this common judgment.

2. The petitioner - husband in O.P. No.535 of 2004, who is respondent in O.P. No.80 of 2008, preferred the respective appeals aggrieved of the common order therein, dated 22-01-2010, passed by the Judge, Family Court - cum - IV Additional District and Sessions Judge at Vijayawada, Krishna District.

3. He filed O.P. No.535 of 2004, under Section 13(1)(i-a) of Hindu Marriage Act, 1955 (for short 'HM Act') against his wife for dissolution of their marriage by granting decree of divorce on the ground of cruelty by her. His wife filed O.P. No.80 of 2008, under Section 9 of HM Act, against him for restitution of conjugal rights on the ground that she was unjustly deserted by him.

4. The Court below through the common order

under challenge rejecting his request to grant decree of divorce dismissed his

O.P. No.535 of 2004 and while agreeing with his wife's stand that she was unjustly deserted by him, granted a decree for restitution of conjugal rights.

5. For the sake of convenience the parties are hereinafter referred to as arrayed in O.P. No.535 of 2004.

6. The relevant facts are that marriage of the petitioner with the respondent took place on 18-06-1986 at Vijayawada as per Hindu Rites and Customs. Respondent joined his society and they lead happy marital life for some time and they were blessed with a female child and a male child. As many as seven instances are referred to by the petitioner which according to him constitute cruelty said to have meted out to him by the respondent.

7. It is according to him that since the beginning respondent used to behave adamantly with her selfishness and with cruel manner which lead the petitioner to set up a separate family by leaving the joint family since 1987. They resided together till 20-05-2004. He states that she used to pressurize him for purchasing costly clothes, to possess own house and jewellery and never used to attend any functions of relatives and friends on the ground of lack of jewellery and thus he was subjected to cruelty. It is according to him that without his

consent, she identified a house at Machavaram Down and pressurized him to purchase the said house by obtaining loan and insisted upon him to take the amount of his sister, who got Rs.2,00,000/- cash and a portion of the house when her husband expired. Since she threatened to commit suicide, he was compelled to consent for the proposal for purchase of the said house by contracting loan and obtaining Rs.2,00,000/- from his younger sister.

8. According to him that she designed a plan to take away the retiral benefits of his father, who retired in the year 2001, and when he rejected it, she threatened to kill their children. He states that as his mother was suffering from blood-pressure, diabetes, knee pains etc., and as she requires daily medicines, to fulfill her desires, respondent performed a huge number of vratams, bhajans etc., incurring huge amounts and even initiated to donate 108 small Shivaligams and idols of Sri Ram family to a temple situated at Machavaram Down, but at the time of inauguration of the temple, she alleged to have shown arrogance, superiority complex, ill treated the invitees, disputed with the Poojari and left the spot leaving him alone at the *Homam* and since there was no other option, he performed the *Homam* with his children by placing a blouse piece in her place in her absence. To retort the same, she performed some poojas on her own by wearing

a towel on her shoulder instead of his presence.

9. The next ground is that the respondent always used to sleep without maintaining timings and never used to allow the friends of their children which caused mental agony to them and thus it reflected her mental imbalance. Though, he requested her to visit Psychiatrist, she refused to his proposal and used to abuse the children.

10. According to the petitioner, due to financial constraints when he sold away his house, she created nuisance and subjected him to mental torture.

11. After selling away his house, he shifted his house to Patamata locality and joined in Coastal Local Area Bank Limited, Vijayawada in the year 2001 and since during holidays, their children used to spend time in a pathetic situation, he used to drop them at his parents' house for a change and they refused to come back to the house expressing their intention to live with the petitioner alone.

12. It is also according to him that on 14-10-2004, when the respondent visited his office and threatened him, he lodged a complaint with Patamata Police complaining the sadistic behavior and her cruel attitude and also her relatives.

13. Thus, according to him all these acts

constituted cruelty to him and hence sought for the relief.

14. Respondent opposed the request of the petitioner by filing a counter. In fact, she has projected her case with relevant details both in her counter in divorce petition and in her petition for restitution of conjugal rights. The sum and substance being, when the income of the petitioner was not sufficient to meet both ends of their family, she encouraged him to get higher degrees in order to get promotions and from clerical cadre and that the petitioner has completed M.B.A., C.S. and B.L. and obtained the rank of Company Secretary and was drawing a salary of Rs.40,000/- per month.

15. Her specific plea has been that the petitioner developed extra marital relationship with one ChaduvulaShailajaKumari, his colleague, and used to put her under mental torture. Even the petitioner without informing her, shifted the residence along with their children to another house and bluntly refused to allow her and she was compelled to put up in the verandah and staircase of the said house. She states that on the instigation of ShailajaKumari, petitioner filed divorce petition in O.P. No.535 of 2004 and since then he never allowed her even to see their children by threatening her with dire consequences despite she made several efforts to join the society of the petitioner. Thus, it occasioned to move the Court for restitution of conjugal rights.

16. The allegations and counter allegations in the petition and the counter, respectively, in the O.P. for restitution of conjugal rights are one and the same that were agitated in the petition for divorce by her husband. We opine it is unnecessary to refer to the details once again.

17. Before the Court below, to substantiate their respective stands, the petitioner examined himself as PW.1 besides examining their daughter, Vijaya Deepika as PW.2, but no documents were marked, and the respondent besides examining herself as RW.1, has examined Atluri Rani, Laveti Hemambara Rao and A. Venkatamma as RWs.2 to 4, respectively, but no documents were marked on her behalf also.

18. The Court below, formulated the following common points for determination in adjudicating upon the controversy between the parties:

“1. Whether the marriage between petitioner (P.w.1) in O.P.53504 and respondent (R.w.1) has to be dissolved by decree of divorce on the ground of cruelty?

2. Whether the respondent (R.w.1) is entitled for restitution of conjugal rights as prayed for in OP.80/2008?”

19. Dealing with the relief of dissolution of marriage by grant of decree of divorce, the Court below basing on the admissions made by PW.2, daughter of the parties, in her cross-examination and the evidence of RWs.1 and 4, having discussed elaborately even derived probabilities which favoured the case of the respondent while condemning the case of the petitioner, by recording relevant findings, arrived at the conclusion that the petitioner was not entitled to the relief of dissolution of marriage by grant of decree of divorce, whereas the respondent was entitled to decree for restitution of conjugal rights and accordingly dismissed O.P. No.535 of 2004 and allowed O.P. No.80 of 2008 granting the decree for restitution of conjugal rights between the parties.

20. Thus, the common order and the decrees passed in the above O.Ps. are under challenge in these respective appeals.

21. In the grounds of appeal in both these appeals, the petitioner (appellant) states that the Court below, somehow, overlooked the fact that the respondent by making false allegations caused physical and mental harassment to him and the same is established through the evidence of the respondent herself. He further states that they have been living separately since 2004 and during the pendency of divorce proceedings, he was

arrested on the criminal complaint filed by the respondent and the relationship between them has been irretrievably broken down without there being any possibility for their re-union in the future and the Court below ought to have granted divorce on the said ground. He also states that the Court below sidelined the circumstance that their children have been residing with him since 2004 and even their daughter has given a statement against the respondent and the same establishes the cruel attitude on the part of the respondent reflecting her conduct in making false allegations concerning illicit intimacy and, therefore, according to him the Court below ought to have granted decree of divorce. He lastly submits that the Court below has not properly appreciated the evidence and basing on the presumption, went wrong in holding that he developed illicit intimacy with Shailaja Kumari. He, therefore, sought to set aside the order and decrees under challenge and to dissolve their marital tie by grant of decree of divorce.

22. Heard Sri P. Nagendra Reddy, learned counsel for the petitioner (appellant), and the respondent as party-in-person, in both the appeals.

23. We have gone through the common order passed by the Court below and the material on record.

24. The evidence of the petitioner in his chief-examination as PW.1 is nothing but replica of what he has

averred in the divorce petition. Their daughter Vijaya Deepika is examined as PW.2, who has also spoken to in the same manner as PW.1 has asserted in his chief-examination. But, certain admissions of vital significance are occurring in the cross-examination of PW.2, which we would like to advert to after referring to the evidence of PW.1.

25. One of the instances spoken to by the petitioner as PW.1 in the direction of causing cruelty to him by the respondent was with reference to the insistence of the respondent for purchasing costly items and jewellery, but his admission in the cross-examination that the father of respondent presented gold and jewellery to her, cuts his stand at the root of that plea, further condemning his assertion that she used to borrow ornaments from her friends and neighbours to attend the functions.

26. In relation to the instances that the respondent insisted him to purchase a house and intended to grab the amount from his widowed sister, the very admission made by the petitioner that the respondent borrowed Rs.2,00,000/- from his younger sister and executed joint promissory note in her favour and his further admission that he purchased the house for Rs.7,10,000/- and paid the amount of Rs.2,00,000/- as advance and even received Rs.1,25,000/- from the younger sister of the respondent, but purchased the house in his name, are

sufficient enough to belie the alleged insistence by the respondent for purchase of the house.

27. Turning to illicit intimacy attributed to the petitioner by the respondent, certain strong probabilities that arise from the answers given by him as PW.1 and the admissions made by PW.2, would substantiate the stand of the respondent. The house property purchased for Rs.7,10,000/- referred to above was sold away by him and the said fact is not denied by him. He admits that he purchased a house site admeasuring 280 square yards at Amaravathi Township, Mangalagiri. He admits that ShailajaKumari is his co-employee, but the suggestion made to him that he discharged all debts and purchased a house at Ramavarappadu in the name of ShailajaKumari denied by him. The fact that he omitted to mention as to in what manner he has utilized the sale proceeds of the house referred to hereinabove is sufficient enough to give rise to an inference that they were utilized for the purchase of house property in the name of Shailaja Kumari. This is further substantiated through his admission that he himself and the said Shailaja Kumari jointly borrowed a sum of Rs.28,000/- from one Venkateshwaramma and executed a joint promissory note and that the said Shailaja Kumari sold it away after filing of the divorce petition. These transactions have also been spoken to by RW.2, who is unrelated to them. This

apart, the admissions made by their daughter as PW.2, in our view, while completely condemning the case of the petitioner, would in fact substantiate the case of the respondent.

28. RW.2 admits in her cross-examination that till May 2004, herself, her brother and the parents lived under one roof and their mother used to attend to the household work properly for some time and their mother used to look after them properly till they passed tenth class. Concerning Shailaja Kumari, she admits that she knew her since her childhood and she got good acquaintance with her at the time of their housewarming ceremony. It is forthcoming from the answer given by her in her cross-examination to a particular question, she has not denied the fact that her father deserted the respondent having developed illicit intimacy with Shailaja Kumari. To yet another question, she expressed ignorance by answering that she does not know whether her father deserted her mother after her father had developed extramarital relationship with Shailaja Kumari. He admits that her mother brought all household articles to their rented house and informed her that she could also stay along with them, but she was prevented to enter into the house and, thus, her mother stayed in the verandah till they shifted to another house. Her admission would show that before shifting to another house, herself, her brother and father

took shelter for a month in the house of ShailajaKumari. These admissions and answers made and given by PW.2 in her cross-examination cannot be lightly brushed aside. Since it is improbable that they would stay in the house of Shailaja Kumari, for a month, who was a stranger to their family, and except to the extent that she was a colleague of the petitioner as asserted by PW.1, would strongly probablises the stand taken by the respondent touching the allegation of illicit intimacy. It has come up in the evidence that on the date when PW.2 deposed in Court, her paternal aunt accompanied her and it is not denied by her that she was studying B.Tech. second year then and totally dependant on her father. Therefore, the finding recorded by the Court below that there was every reason for PW.2 to depose in favour of her father and against her mother under the influence of her father which is a finding of fact, cannot be faulted with.

29. Concerning the allegation that the respondent, at the time of inauguration ceremony of temple, to which temple 108 small Shivalingams and idols of Sri Rama family were donated, the respondent with arrogance ill-treated him and his relatives, he admits that he worshipped the God while denying that he brought Shailaja Kumari at the time of worship in the inaugural ceremony and the respondent and other elders have raised objection to allow her. However, it is found from the

evidence of PWs.1 and 2 that the petitioner and the respondent performed a ceremony at UbhayaRamalingeswaralayam temple for the purpose of LingaPrathishta and also donated the statues of Deity Sitarama Lakshmana Anjaneya to the temple authorities and at that time, PW.1 demanded the priests of the temple to allow him to perform pooja along with Shailaja Kumari, but the authorities refused the demand of PW.1, on which petitioner left the place in angry and subsequently the temple authorities permitted PW.1 along with Shailaja Kumari, which suggestion when made to PW.1 was not denied by him. The outcome being that the allegation of the petitioner that at the time of '*homam*', respondent refused to participate and in her absence, he performed *homam* by placing blouse piece and completed it gets falsified.

30. Thus, on a careful analysis of evidence of PWs.1 and 2 and the evidence of RWs.1 to 4 would show that PW.2 was set up by PW.1 and she has spoken to as desired by PW.1 under his influence against her mother.

31. Thus, the admissions made by PW.2 in her cross-examination would completely impeach the assertions made by her in her chief-examination, showing that at the behest of her father, she was made to speak against her mother in the chief-examination. When the evidence of PW.2 is excluded from the record, in our view,

there is absolutely nothing to hold that the petitioner is successful in substantiating the instances referred to by him in the direction of the alleged acts of the respondent constituting cruelty to enable him to get the relief of dissolution of marriage between them by grant of decree of divorce.

32. For the aforesaid reasons, we are of the considered view that the findings recorded by the Court below are well reasoned and based on appreciation of evidence by dealing with the aforesaid admissions and assertions elaborately do not suffer from any legal infirmity warranting interference of this Court.

33. Thus, both these appeals are devoid of merit and the same are, therefore, dismissed confirming the orders and decrees under challenge in all respects. There shall be no order as to costs.

34. As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

R. SUBHASH
REDDY, J

A. SHANKAR NARAYANA, J

June 29, 2015.

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