

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

FCA No.61 of 2006

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

This appeal is filed, by the Appellant/petitioner (husband), under Section 19 of the Family Court Act, aggrieved by the order and decree dated 04.04.2006, in O.P. No.461 of 2005 passed by the learned Judge, Family Court, Hyderabad dismissing the petition holding that the petitioner is not entitled to relief of dissolution of marriage with the respondent-wife.

2. The appellant/husband filed the aforesaid petition before the Family Court, under Section 13(1)(ia) of the Hindu Marriage Act(for short, 'the Act'), seeking to dissolve the marriage between himself and his wife-respondent herein dated 04.02.1992, claiming that the marriage between himself and his wife took place in Hyderabad according to Hindu religious rites and caste customs and after consummation, they lived happily for three months, that from the beginning the respondent-wife showed adamant nature and insisted to set up separate family at Hyderabad and when the appellant/husband refused to do so, she gave a false complaint against the petitioner/husband, his parents and relatives, and in a criminal case under Section 498-A, 307 and 493 of I.P.C. the petitioner was in prison for 3 days and during pendency of the case the respondent-wife gave another complaint to Mahila Sabha Legal Aid Committee and also before their caste (Yerukala) elders, that the respondent-wife attributed illegal intimacy to him with other women that during the pendency of the cases, respondent-wife terminated her pregnancy without his permission, that after criminal cases were

compromised they lived at Hyderabad but she did not change her attitude and she continued suspecting him, that even after shifting family from Hyderabad to Lingotum village in Nalgonda district in 1994, the respondent with support of her parents, created him all sorts of problems. Subsequently he resigned his State Government job as he got a job of Health Inspector in Vizag Port Trust and he joined in it, that on 15.11.1996 respondent delivered a male child in Port Trust hospital, that since 1998, she again developed suspicion against her husband and made false allegations against her husband, that the respondent-wife again gave complaint to IV town police station, Vizag stating that he was having illegal contacts with neighbouring unmarried girl, that the respondent wrote letters threatening him which he showed to police who took away all those letters. When he purchased a new flat at Vepagunta and started residing there, she even continued suspecting him, The petitioner took the respondent/wife to a psychiatrist by name Bhagya Rao, who suggested treatment for respondent/wife but herself and her family members, rejected treatment and they all threatened him to see his end if he provides treatment to her with psychiatrist. On 05.04.2002 when the petitioner was preparing to drop his children at school, the respondent came from house with a big stone and she tried to throw it on him and scolded him in filthy language running away into the colony. In the evening when he returned back from his office respondent already left the house to Hyderabad by taking Rs.1000/- in cash and 5 tulas of gold. When he requested her by phone to join his company, she wrote a letter to Port Chairman with false allegations to create problems to him, that the respondent also took sleeping pills in order to harass him several times, that once she tried by blazing herself, that in the month of April(year not mentioned), when he met with major accident, his two legs were fractured severely and he was admitted in Seven Hills hospital, the respondent did not turn up to see him during the three months treatment. In the said circumstances, he is constrained to file the present petition claiming a decree of divorce against the respondent.

3. The respondent-wife filed counter while denying and disputing of the petition averments supra including for entitlement of any relief for divorce sought by him with the contentions that he had illegal contacts with neighbouring unmarried girls by inviting them to the house in the absence of the respondent well-known to the neighbours about his character and she also personally came across such incidents from which she presented a complaint to the IV town police station at Vizag and he intentionally and forcibly admitted the respondent in a mental hospital to create as if she got mental imbalance and to make out a ground if possible for she is normal, that her parents consulted other psychiatrist, who certified that she is mentally suitable and perfectly fit in health which proves the petitioner-husband's conduct, that he met with an accident while driving the vehicle under intoxicated condition, that he started harassing her to meet additional dowry demands including money for construction of house in his name at Hyderabad, that he is a sadist and womanizer and when she was sick due to pregnancy, he insisted her to undergo abortion and for refusal he forcibly tried to give injection to abort, for which she was constrained to file a case M.C.No.161 of 2003 and thereby sought for dismissal of the petition for divorce claiming that she is a victim in his hands for her no fault and he cannot take advantage of his fault.

4. It is from the above pleadings and after recording evidence of P.Ws.1 to 4 and R.Ws.1 to 5 with reference to Exs.P.1 to P.37, the learned Judge, Family Court, dismissed his application for divorce by holding he is not entitled to any sympathy from his managing to get *ex parte* decree of marriage and married again even, without knowledge of respondent for no due service and from the *ex parte* decree set aside application of her later allowed by permitting her to contest supra.

5. It is impugning the same, the present appeal is maintained with the contentions in the grounds of the appeal as well as oral submissions of his counsel that the Court below failed to appreciate the evidence of P.Ws.1 to 4 and Exs.P.1 to P.37, that the Court below ought to

have seen that the behaviour of the respondent was abnormal and she used to create troubles to him continuously and she was put in mental hospital and given treatment for mental disorder, that the Court below erred in not giving the finding on cruelty meted out by him in the hands of the respondent-wife by suspecting fidelity and harassing day in and day out and including in her filing criminal cases against him which were ended in acquittal and she was even warned by the CBCID Police for giving false report, that the Court below erred in holding that there was no notice to the respondent-wife though he issued telegraphic notice and Ex.P.6 is the receipt for that issued by the postal authorities, that the trial Court also failed to consider that the respondent was not even come to see when he was bedridden for about 3 months on account of accident and fractures to his both legs, that the respondent is only interested in harassing the appellant and seek maintenance from him, that the Court below ought to have seen that the respondent has no affection even towards the children, that the lower Court failed to see that after filing the petition (O.P.) for divorce, the respondent appeared and filed counter on 01.03.2003, thereafter remained absent nearly for 8 to 10 times and ultimately the Court below set her *ex parte* on 10.02.2004 and therefore the finding of the lower Court is not correct, that the respondent having left the society of the petitioner long back and suffered the *ex parte* decree, from which he has contacted second marriage and the second marriage has been entered in service records of the appellant and hence, to set aside the order of the trial Court by allowing the appeal.

6) Heard the learned counsel for the appellant at length and taken as heard the respondent for her non-appearance despite service, to decide on merits.

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

8) Now the points that arise for consideration are:

- 1) Whether the impugned order dated 04.04.2006, passed in O.P.No.461 of 2005 by the learned Judge, Family Court,

dismissing the petition for 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:

9. There is no dispute on the fact that the marriage of the parties was performed on 04.02.1992 as per Hindu rites and caste customs and the same was consummated and in their wedlock they were blessed with two children. The petition for divorce is filed as per Sec.13(1)(ia) of the Act on the ground of cruelty. The fact that there was an *ex parte* decree and pursuant to which he married again and subsequently on the application of the wife of not served and no knowledge and to set aside the same and it was allowed and permitted her to contest are also not in dispute since borne by record. The impugned order of the lower Court with reference to the evidence on record discloses that the appellant-husband filed O.P.No.638 of 2002 seeking divorce on 02.12.2002 against the respondent –wife in the Family Court, Visakhapatnam where notice was not served and it is only on 14.08. 2003 she appeared through an advocate and later filed counter through advocate on 01.12.2003 and when the matter was coming for enquiry from 06.12.2003 and for the absence of respondent on 10.02.2004, she was set *ex parte* and *ex parte* decree was passed. It is before service of summons in the divorce petition, in the month of February/March, 2003 she has given a complaint before the Station House Officer, Chowtuppal against the petitioner-husband for the offence under Section 498-A of I.P.C. and the petitioner-husband obtained anticipatory bail subsequently it was while they were living together as per the record. Undisputedly, as even the wife and husband lived together including during April to June, 2003 in same abode and she was admitted in the mental hospital, Visakhapatnam on 16.06.2003 and was given shock treatment and only on 20.06.2003, as per the evidence on record, having come to know the same, her brothers and sisters took her by discharging from the hospital with them to Hyderabad and all through she was not

informed about filing of the divorce case by him. It is subsequently on coming to know as referred supra, she engaged an advocate on 14.08.2003. In fact she moved for transfer of the O.P. proceedings to Hyderabad.

10. From this factual background, it shows that the petitioner-husband, by suppressing the fact of his already filing divorce petition in December, 2002 at Visakhapatnam, lived with the wife in the same abode and suddenly joined her in the mental hospital in June, 2003 by kept under treatment to show as if she was suffering from mental disorder. In fact, there is no iota of material from him even from the Exs.P.1 to P.37 that prior to December, 2002 she was having any mental disorder, much less consulted any psychiatrist or admitted in any hospital for mental ill-health and it is not even his pleading that all of a sudden in June, 2003 she developed mental illness. This shows any amount of unfair conduct on the part of the petitioner-husband including his obtaining an *ex parte* decree behind her back and by married another woman without any *bona fides* and also cause changed the service records to substitute name of the so called new wife in the place of the respondent already entered. Thereby so far as that finding of the trial Court in the order impugned concerned, it is supported by the facts and circumstances and all probabilities for nothing to interfere much less to say any desertion from her remaining *ex parte* but for the reasons stated supra, apart from desertion not pleaded as a ground and without any pleading, any amount of evidence has no sanctity, that too, for no issue or point regarding desertion formulated to answer and much less for the appellate Court now to consider for the first time from the contentions in the appeal grounds supra. Even regarding the acts of cruelty, the fact that she filed M.C.No.161 of 2003 dated 30.12.2003, after she was taken to Hyderabad by her family members from Visakhapatnam after he admitted her in mental hospital on coming to know by cause discharged and on consulting the doctors at Hyderabad, they found she is perfectly sound and no any mental ill-health. Even he opposed

the grant of maintenance which was allowed on merits and even he preferred Crl.R.C.No.2481 of 2004 covered by Ex.P.18, dated 29.03.2004 which no way constitutes any act of cruelty on the part of the wife but for if at all his acts in non-providing any maintenance to her.

11. A perusal of the evidence on record, with reference to what is discussed supra, shows justification in her giving report for the harassment against him, that too, while they were living together at Visakhapatnam for the cruelty she meted out in his hands where he admittedly obtained anticipatory bail and later even when they lived together, including from the evidence on record, shows while living together he admitted in mental hospital in June, 2003. The above acts of him are nothing but showing his conduct and that after her giving report, he subsequently leading life with her under the same roof. Barring that there is nothing even to say, the respondent-wife is guilty of cruelty either from giving of that report for registering any crime or for calling for any counselling including from the women Protection Cell. There is no other material filed by him showing she got any ill-will and hatred and taken the recourse to give report for ill-treatment, in order to make him suffer without any justifiable cause or reason, leave about his acts by living even thereafter tantamounts to condonation for not to take it as a ground even. On perusal of the evidence on record including cross-examination of P.Ws. 1 to 4 in correlation with that of R.w.s. 1 to 5, clearly establishes that it is the respondent that is the victim in the hands of the petitioner but not vice versa and it can be said from the settled principles that the petitioner-husband cannot take advantage of his no fault by making the wife a scapegoat to get rid of her and to maintain the claim for divorce and by attributing as if she is at fault or guilty of cruelty. The evidence on record regarding past acts on 1992 to 1996 no way helpful to him for the couple even later undisputedly till 3rd week of June, 2003 lived together. Having regard to the above, when the trial Court rightly came to conclusion in dismissing the petition of the husband for divorce, 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:

12) In the result, the appeal is dismissed. 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 09, 2015

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