

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

F.C.A No.127 of 2005

AND

F.C.A.NO.73 OF 2008

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COMMON JUDGMENT: (Per Dr Justice B.Siva Sankara Rao)

These two appeals are filed, impugning the common order dated 30.11.2004 in O.P.No.78 of 2001 re-numbered as O.P.No. 34 of 2002, dismissing the petition for dissolution of the marriage (filed by the petitioner-husband against the respondent-wife on the grounds of cruelty and desertion under Section 13(i)(ia) and (ib) of the Hindu Marriage Act, 1955) and in O.P.No.378 of 2001, allowing the petition for restitution of conjugal rights (filed by the petitioner-wife against the respondent-husband). Needless to say M.C.No.95 of 2001 was also allowed by the common order which is not subject matter of the appeals herein for the remedy under Section 19(2) of the Family Courts Act was by revision.

2. The contents in the grounds of the two appeals respectively as well as the oral submissions by the counsel for the appellant in both the appeals (husband) are that the common order of the learned Family Court Judge, Vijayawada is contrary to law, weight of evidence, probabilities of case and occasioned failure of justice from ill-appreciation of facts and law including in ignoring the case under Section 498-A IPC filed by the wife and caused his arrest to harass with no regard for matrimonial relationship and out of spite and the

relationship is irretrievably, broken down; that the restitution of conjugal rights petition filed by the wife is nothing but a counterblast to his divorce case and she was not only guilty of desertion but also cruelty that is established from the evidence on record and hence, to set aside the impugned two orders of the lower Court and allow the appeals by dismissing the petition for restitution of conjugal rights and by decreeing the petition for dissolution by dissolving their marital tie.

3. Whereas, it is the contention of the respondent-wife in both appeals that common order of the lower Court is a well considered one with detailed discussion on facts and law reproducing in elaborate the contentions of both parties with reference to the pleadings and evidence (oral and documentary) and for this Court while sitting in appeal against said reasoned common order of the lower Court, there is nothing to interfere, and hence, to dismiss both the appeals.

4. Heard and perused the material on record with reference to the rival contentions supra advanced by both sides. For the sake of convenience the parties hereinafter are referred to as arrayed before the trial Court in the divorce petition as petitioner- husband and respondent-wife respectively. Both the appeals are taken up together to decide as the matter was decided by common order from the common evidence of both sides before the trial Court.

5. Now, the common points that arise for consideration are:

(1) Whether the petitioner-husband is entitled to decree of divorce on the grounds of desertion and cruelty or any one of those and if so, the dismissal of the divorce application filed by him and allowing of the restitution of conjugal rights filed by his wife, are unsustainable and require interference by this Court while sitting in an appeal against the impugned common order

and if so, with what observations and conclusions?

(2) To what relief?

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POINT No.1:

6. There is no dispute on the marital relationship of husband and wife. It is also not in dispute that the husband got an aged mother and he is the only son to her, apart from caretaker of her. It is also not in dispute that the wife filed MC.No.95 of 2001 covered by the impugned common order and whereunder, the trial Court granted maintenance at the rate of Rs.500/- per month to her with effect from 01.10.2001 besides Rs.2,000/- towards litigation expenses. It is also not in dispute that the wife filed a criminal complaint against him covered by Crime No.284 of 1997, and after investigation the police filed charge sheet that was taken cognizance in C.C.No.485 of 1998 and after evidence before the trial Court before final decision, along with then pending M.C.No.100 of 1999 proceedings were ended in compromise and the couple joined back together for amicable and happy marital life to resume, though earlier they were living separate from 30.11.1997. It is suffice to say that the divorce O.P. filed by him was in the year 2001 and thereby there is not even two years period of desertion by the time the divorce O.P. filed by him, much less to establish the wife living away to him with permanent *animus deserendi* for a continuous period of two years to the filing of the said divorce case, more particularly from the couple joined together by compounding of the C.C.No.485 of 1998 and the proceedings in M.C.No.100 of 1999. Thus, by virtue of which, whatever the earlier attribution of desertion or even the fractures said to have been sustained by her in his hands from his beating covered by the above crime were deemed condoned for all purposes and nothing available thereafter, between them to survive from their reunion for either of them to take any of the earlier acts as cruelty or desertion. Thus,

nothing more is required to say there is no ground for desertion made out by him to seek dissolution of marriage as even subsequent conduct of wife from her filing of restitution of conjugal rights and expressing willingness to join no way to the advantage of the husband.

7. There remains the alleged act of mental cruelty which he claims. At the cost of repetition, the C.C.No.485 of 1998 filed for the offence under Section 498-A IPC supra, when admittedly ended in compromise and the couple re-joined together to lead happy marital life by drowing their differences, the earlier registering of crime or any averments therein of arrest of him and his getting of bail are no way available to him much less to complain therefrom as if those constitute mental cruelty. Having condoned the acts by setting the dispute in compromise the same cannot be agitated. Apart from it, mere pursuing of a legal remedy cannot be a ground to complain the same as act of cruelty for nothing even to show it was laid to harass him much less with spite and ill-will. Even coming to the Ex.A.1 letter written by (the brother of the wife) RW.2-Prakash Rao to the husband (PW.1-Bala Subrahmanyam), it is only with a request to attend to the function of the child in their family. In the Ex.A.1-letter, there is no any material favourable to the husband to place reliance on it for any acts of cruelty on the part of the wife therefrom. That is the only document he placed reliance. Needless to say, but for his *ipsi dixit* and self serving testimony as PW.1 there is no other independent evidence he could place reliance in support of his alleged acts of cruelty. In fact, even in the divorce application, there are no any specific averments as to what particular act or acts that constitutes mental cruelty much less from his evidence.

8. Further, not only his claim is disproved but also it is made out that he has without reasonable cause abandoned his wife even after compounding of the criminal case and closing of earlier maintenance

case, from the evidence of respondent viz. besides herself as RW.1 and her brother as RW.2, with three more witnesses she cause examined, in support of her pleadings in the counter to the divorce petition as well as the petition averments for restitution of conjugal rights that she is always ready and willing to join and he is not allowing her to join him.

9. Having regard to the above, practically, there is nothing to interfere with the findings of the trial Court which rightly dismissed his petition for divorce and ordered his wife's petition for restitution of conjugal rights between them. Accordingly, the point No.1 is answered.

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POINT NO.2:

10. In the result, the appeals F.C.A. No..127 of 2005 and F.C.A.No.73 of 2008 are dismissed, confirming the common orders of the trial Court in O.P.No.34 of 2002 and 378 of 2001. Consequently, miscellaneous petitions, if any, pending in the appeals also shall stand dismissed. No order as to costs.

R. SUBHASH REDDY, J

Dr.B.SIVA SANKARA RAO,J

February, 26 2015

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HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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DATE: 26.02.2015

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