

HONOURABLE SRI JUSTICE R.SUBHASH REDDY

AND

HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.M.A.No.4858 of 2004

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

This is the appeal is preferred by the appellant-respondent(wife) impugning the decree of divorce dissolving their marriage, dated 05.03.1988 granted against her on the application of her husband (petitioner) in O.P.No.135 of 2001 on the file of the I Additional Senior Civil Judge, Kakinada dated 10.12.2004, with the contentions in the grounds of appeal as well as oral submissions during the course of hearing that the decree of divorce granted by the lower Court is contrary to law and weight of evidence, that the trial Court failed to consider the fact that P.W.1-husband himself deposed of they lived together at her parent's house, that the evidence of P.W.2-alleged tenant of the petitioner/husband's house during 1991 to 1994, is no way reliable that was not considered by the lower Court, that the Court below should have seen that the appellant-respondent(wife) before the lower Court never neglected her husband much less she is guilty of cruelty or desertion for his seeking divorce much less to grant relief, that the trial Court should not have considered the application for divorce filed by the husband on the ground of the petitioner-husband was forced to come as illatum son-in-law which is on its face false and unbelievable as the respondent-wife got 4 brothers to her parents, that the trial Court should have seen that the respondent-wife even after his filing of restitution of conjugal rights and granting relief in his favour, made attempt to join her husband and went to him, however, he did not allow her including after receipt of notice, and thereby sought for to set aside the order and decree granting divorce by allowing the appeal.

2. Whereas, it is the contention of the respondent-husband that the order of the lower Court supported by the reasons is well considered and for this Court while sitting in appeal to interfere and also even to grant permanent alimony from the husband as per the expression of this Court in **Jayakrishna panigrahi Vs.Surekha panigrahi**. Hence, to dismiss the appeal.

3. Heard and perused the material on record. The parties herein are referred to as

they were arrayed before the trial Court.

4. Now the points that arise for consideration are that:

1. Whether the appellant-wife is not guilty of cruelty or desertion or both and the respondent (husband) herein is not entitled to decree of divorce if so, the order of the lower Court granting decree of divorce is unsustainable and requires interference by this Court while sitting in appeal?

2. To what relief?

Point No.1:

5. The undisputed facts are that the marriage between the couple took place on 05.03.1988 as per Hindu law and customs of same was consummated and they led happy marital life for some period at Kakinada town which is the place of the petitioner/husband and in their wedlock they were blessed with male child by name Sri Sai Pavan in the year 1991. It is also not in dispute that the respondent/wife married earlier another person and has taken divorce from him in the year 1984. It is also not in dispute that the O.P.No.20 of 1998 was filed by the petitioner-husband against wife for restitution of conjugal rights and the same was decreed in his favour and he also cause issued legal notice, dated 29.10.1997 to the respondent/wife inviting her to join him.

6. Now coming to the core of the issue as to the husband is entitled to decree of divorce against the wife concerned, it is his case that from the beginning of the marital life, his wife did not act prudently and dutifully by exhibiting her parents' financial soundness with supremacy and superiority complex by demanding him and quarrelling with him even for no reasons and for his refusal to come and live at her parents house as illatum son-in-law, by developing aversion towards him and started ill-treating and ultimately she left his company on 03.01.1993 on the pretext that her brother met with accident and later failed to return and even after he filed restitution of conjugal rights case after exhausting efforts to take her back, she failed to join by expressing no mind to join and despite decree for restitution of conjugal rights and thereby he is entitled to divorce. The counter contest of respondent/wife while denying all these facts with a claim that it is she that was subjected to cruelty and harassment including for additional dowry and for his vices she was necked out from his house at Kakinada town for her no fault and disallowed by him despite efforts through mediators including after his filing restitution of conjugal rights and its

decree, there is no fault of her and even there is no desertion or cruelty and he is not entitled to divorce. From the rival contentions in the course of trial on behalf of the petitioner, besides him as P.W.1, he examined a tenant of his house for the period from 1991 to 1994 as P.W.2 and on behalf of the respondent she came to the witness box as D.W.1 with no documentary evidence placed on record. Now the trial Court mainly considered in dissolving the marital tie for wife not joining the company of the husband having deserted despite decree for restitution of conjugal rights for more than one year before filing of this petition. Admittedly, the decree for restitution of conjugal rights was passed in favour of the husband and against the wife. Admittedly, there is a notice he caused issued thereafter demanding her to join and she did not give any reply to it. Her contention in the counter as well as her evidence as R.W.1 was that she went to join him, however, he did not allow her but against this version in the cross-examination she stated that she went and stayed for one day. This contradictory version of her itself belies coupled with non-giving of reply to the notice of him admittedly she received after decree for restitution of conjugal rights by his demanding her to join with no worth explanation even for it. Those facts and circumstances substantiating the contention of the husband and negates said contention of the wife. It was also held by this court way back **Chapala Hanumaiah Vs Kavuri Venkateshwarlu** that having received and acknowledged the statutory legal notice, non-giving of reply to said legal notice, improbably negates the defence version in the absence of worth explanation, as any prudent person under the said circumstances should have, but for no defence to reply. This conduct is nothing but put an end to marital tie. Thus, the desertion as a ground for divorce is proved as concluded by the trial Court. Now coming to the permanent alimony, as observed by this Court in Jayakrishna Panigrahi(supra), considering the oral request that even sufficient under Section 25 of the Hindu Marriage Act as part of duty of the Court while dissolving the marital tie or annulling the marital tie to grant permanent alimony to the other couple, here, as the P.W.1's evidence is crystal clear in support of his pleading that he is resident of Kakinada town and they stayed in his house and P.W.2 is his tenant who also categorically deposed that he stayed during 1991 to 1994 as a tenant in the petitioner's house at Kakinada town. Apart from other facts, that itself is also sufficient to consider the means of the petitioner/husband before the lower Court and even to say what the respondent/wife was allegedly exhibiting supremacy from the means of her parents, there is nothing to show she got any property or means. Having regard to the above, it is just to award

Rs.2,00,000/- towards permanent alimony. Accordingly, point No.1 is answered.

Point No.2:

7. In the result, the appeal is dismissed, however, while considering the fact that the respondent/husband possessed a house property in the heart of the town of Kakinada, he is ordered to pay Rs.2,00,000/- towards permanent alimony to the appellant within six months from today, failing which, she can execute and recover with interest at 9%p.a. There is no order as to costs of the appeal. Consequently, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

JUSTICE R.SUBHASH REDDY

Dr. JUSTICE B. SIVA SANKARA RAO

Date:19-03-2015

Vvr