

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

CIVIL MISCELLANEOUS APPEAL No.4404 of 2004

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JUDGMENT : (Per Justice R. Subhash Reddy)

This civil miscellaneous appeal is filed under Section 28 of the Hindu Marriage Act, 1955, by the unsuccessful petitioner in O.P.No.271 of 2000, aggrieved by the order dated 31.07.2003, passed by the learned Principal Senior Civil Judge, Rajahmundry, dismissing the said O.P. filed under Section 13 (1)(b) of the Hindu Marriage Act for dissolving the marriage of petitioner with respondent and for grant of decree of divorce. For the purpose of disposal of this appeal, we refer to the parties as arrayed in O.P.No.271 of 2000 before the Court below.

2. The marriage of petitioner with the respondent was performed on 29.05.1994 as per Hindu rites and customs and the marriage was consummated. The petitioner is working in Railways at Rajahmundry. They were blessed with a male child during the wedlock. The petitioner sought dissolution of marriage on the grounds of desertion and cruelty. In his petition, it is alleged by the petitioner that after they lived together for ten months happily at Rajahmundry, respondent and her relatives started demanding the petitioner to resign his job in Railways and put up family at Ravulapalem where her relatives and

sister are residing, which was refused by the petitioner. The respondent and her relatives also demanded the petitioner to go to Kuwait to earn more money as much as the respondent's brother is working at Kuwait. It is alleged by the petitioner that as he did not heed to the advice of respondent and her relatives, the respondent developed ill-will and hatred towards him and started harassing him with words and behaviour. It is alleged that the respondent used to threaten to commit suicide and that she along with her relatives, also threatened to kill him. Referring to the complaint of respondent filed before JFCM, Tanuku, which was referred to Penumandra Police and registered as Crime No.26/2000 under Section 498-A of IPC, it is stated that the said complaint was ultimately closed as mistake of fact. The petitioner, thus, asserting that the respondent deserted him and also caused mental cruelty to him, sought for the relief of dissolution of marriage and for grant of decree of divorce.

3. The respondent/wife has filed a detailed counter. While denying the various allegations made by the petitioner, it is stated in the counter that at the time of marriage, her parents have paid Rs.1,00,000/- towards 'pasupu kunkuma' apart from an amount of Rs.10,000/- towards 'adapaduchu lanchanam' to the sisters of petitioner and they have also given 15 sovereigns of gold. Subsequently, she has joined the petitioner at

Rajahmundry and they lived happily for some time but the petitioner was addicted to bad vices like drinking, playing cards and womanizing and started ill-treating the respondent with unlawful demands and beat her indiscriminately and he was actually instigated by his mother and sisters. Further, pleading that there was a demand for additional dowry and also for purchase of refrigerator by the petitioner and his sister and pursuant to the same, her parents have paid Rs.10,000/- under compelling circumstances, and requested the petitioner to send the respondent to their house for delivery. Even after birth of child, the petitioner and his mother did not turn up to see the new born child and they demanded additional dowry of Rs.50,000/- and the respondent's brother paid an amount of Rs.25,000/- to the petitioner and his mother. It is further pleaded that the petitioner has developed illegal intimacy with one Y.Sarojini and was leading adulterous life and when she has questioned the same, she was beaten and the petitioner started moving with her openly. It is further pleaded that she was put in a shed without power supply and she had to lead her life in the said shed for some time with the child. Further, pleading that there are no grounds for grant of divorce as claimed by the petitioner, she sought for dismissal of the petition.

4. The petitioner has also filed rejoinder denying the

allegations made in the counter.

5. On behalf of petitioner, PWs.1 and 2 were examined and documentary evidence under Ex.A-1 was filed. On behalf of respondent, RWs.1 and 2 were examined and Exs.B-1 to B-15 were marked. The civil Court, having considered the oral and documentary evidence on record, has held that the petitioner did not make out a case for grant of divorce either on the ground of desertion or cruelty. With regard to allegation of desertion, it is held that as there is no separation of spouses for a clear period of two years, the petitioner is not entitled for decree of dissolution of marriage on that ground. Even with regard to cruelty, it is held that the petitioner has failed to prove the same, and hence, dismissed the petition.

6. Heard both sides.

7. In this appeal, it is contended by the learned counsel for petitioner that though respondent lived with petitioner only for a period of ten months after the marriage and deserted the petitioner thereafter, the civil Court has mis-construed the evidence on record and dismissed the petition. Further, it is submitted that the allegations made by the petitioner would constitute cruelty, which is sufficient ground to dissolve his marriage with the respondent.

8. From a perusal of the oral evidence, petitioner himself as PW-1, in his cross-examination, has stated that he filed the present O.P. apprehending that respondent may lodge a fresh criminal case against him and further he admits that he is willing to receive the respondent if she is willing to join him. Similarly, RW-1 also stated in her evidence that she is prepared to join the petitioner if there is an assurance from him with regard to security to her life. So far as the allegation of desertion is concerned, it is clear from the evidence and material on record that the petitioner himself admits that respondent stayed with him from August to October 2000, whereas the petition was filed on 29.12.2000. It is clear from the language under Section 13(1) of the Hindu Marriage Act, 1955 that for dissolution of marriage by way of decree of divorce, there must be evidence to show that either of the spouses has deserted the other one for a continuous period of not less than two years immediately preceding the presentation of the petition. In view of the evidence on record, we are of the view that the civil Court has correctly recorded a finding that the petitioner did not make out a case for dissolution of marriage on the ground of desertion as there is no intervening period of two years between the alleged date of desertion and the date of filing the petition.

9. Even with regard to the allegation of cruelty, it is true that a complaint was filed by the respondent against the

petitioner on 28.04.2000, which was registered for the offences under Sections 498-A, 406, 497, 344, 347, 384, 323, 506(2) r/w.34 of IPC. It is her further allegation that at the time of marriage, her parents have paid an amount of Rs.1,00,000/- towards 'pasupu kunkuma' and also an amount of Rs.10,000/- towards 'adapaduchu lanchanams' to the sisters of petitioner, and inspite of the same, there were repeated demands for payment of additional dowry. It has specifically come in evidence led on behalf of respondent that after birth of child, even to visit the child, there was a demand for an amount of Rs.50,000/- by the petitioner and that the brother of respondent has paid an amount of Rs.25,000/-. Though the complaint lodged by the respondent is closed as mistake of fact, that by itself, is no ground to hold that the respondent has caused cruelty to the petitioner. It is the specific case of respondent that the petitioner having developed bad vices like drinking, playing cards and womanizing, is leading adulterous life with his co-employee by name Y.Sarojini. Unless the specific instances of cruelty are proved through evidence, no decree of divorce can be granted. It is clear from the evidence on record that the respondent had to stay back with her parents in view of the illegal intimacy developed by the petitioner with the other lady and when the same was questioned, she was also beaten. In that view of the matter, having regard to such evidence on record, it is very difficult to hold that lodging of

complaint by the respondent and not joining the petitioner to lead conjugal life will constitute cruelty for granting decree of divorce. It is also clear from the evidence on record that no attempt is made from the side of the petitioner to bring the respondent from the house of her parents, and on the other hand, it is the specific case of respondent that she was ill-treated and the petitioner has developed hatred only on account of his illicit intimacy with the other woman by name Y.Sarojini. From the evidence on record, we do not find any merit in this appeal so as to interfere with the order passed by the civil Court rejecting the petition filed by the petitioner for grant of decree of divorce.

10. Accordingly, the appeal is dismissed. No order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

R. SUBHASH REDDY, J

DR.B.SIVA SANKARA RAO, J

4th February 2015

ajr