

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

C.M.A.No. 1027 of 2004

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JUDGMENT: (Per Justice R.Subhash Reddy)

This Civil Miscellaneous Appeal is filed, under Section 28 of Hindu Marriage Act, 1955, by the respondent in H.M.O.P.No.37 of 1999 on the file of the learned Senior Civil Judge, Vizianagaram, aggrieved by order and decree dated 28.08.2003. The aforesaid H.M.O.P was filed, under Section 13(1)(ib) of the Hindu Marriage Act, 1955, by the respondent herein, seeking dissolution of marriage with the appellant herein, on the ground of desertion.

2) The respondent herein has filed the aforesaid petition, with the following allegations. His marriage with the appellant took place in the year 1987 as per the Hindu rites and customs. Immediately after the marriage, the appellant joined his company, they lead happy marital life about five months and later the appellant developed hostile attitude towards him and family members and did not care for his words. The appellant used to leave his company and used to go to her parents' without any permission or information and she used to stay there days together. The appellant insisted him to put up a separate family, away from his parents and also insisted for partition. In spite of issuing notice dated 08.07.1996, inviting the appellant to come and join him, she did not do so. Another notice dated 31.08.1996 was issued to atleast agree

for divorce, for which a reply was sent on behalf of the appellant with all false and untenable allegations story of harassment and dowry demand was invented. Subsequently, the appellant filed a petition in M.C. No.22 of 1996 under Section 125 Cr.P.C before the Judicial Magistrate of the First Class, seeking maintenance.

3) Referring to the above cases and also alleging desertion, the respondent herein filed the H.M.O.P seeking dissolution of marriage.

4) The appellant herein filed counter denying the allegations. In the counter, it is stated that, in view of the harassment for dowry, a complaint was lodged for the offence punishable under Section 498-A I.P.C. It is further stated that, she also issued suitable reply when notice was served on her, referring to the petition in M.C. No.22 of 1996 before the Judicial Magistrate of the First Class, in which maintenance was awarded. It is alleged that the respondent harassed her physically and mentally for getting dowry from her father.

5) The trial Court, on behalf of the petitioner, examined P.Ws 1 and 2 and marked Exs.A-1 to A-8. The appellant examined herself as R.W 1 and no documents were marked on her behalf.

6) By appreciating the oral and documentary evidence on record, the trial Court has clearly held that there are strong misunderstandings between the parties; as such, it cannot be said that the appellant herein has left the society of the respondent without any reasonable cause. However, in view

of the misunderstandings developed between the parties, the trial Court recorded finding that there is no use in keeping the marital tie between the parties intact and has ordered dissolution of marriage.

7) In this appeal, it is contended by the learned counsel for the appellant that though the allegation of desertion has not been established, only on the ground of misunderstanding, the trial Court has ordered for granting dissolution of the marriage. It is further submitted that when notice was issued on behalf of the respondent for divorce, suitable reply was issued and further the complaint filed before the police for the offence punishable under Section 498-A I.P.C ultimately ended in conviction of the respondent and confirmed by this Court. In view of the same, it cannot be said that the appellant herein has deserted the respondent, so as to allow the petition filed by the respondent under Section 13(1)(ib) of the Hindu Marriage Act, 1955.

8) On the other hand, it is submitted by the learned counsel for the respondent that, after the marriage the appellant and the respondent lived together for a very short period and thereafter, the appellant has deserted the respondent without any just cause and reason. As such, there are no grounds to interfere with the impugned order and decree.

9) In this case it is clear, even as per the findings recorded by the trial Court, there is no desertion as pleaded by the respondent-husband. In fact to the notices issued under Ex.A-3 and Ex.A-6 to the appellant, she issued reply notices under

Exs.A-5 and A-8 in which she clearly pleaded that the respondent was demanding additional dowry and property. In this regard, a complaint was also filed by the appellant for the offence punishable under Section 498-A I.P.C and the respondent was also convicted for the said offence. In view of the same, it cannot be said that the respondent has deserted the petitioner, so as to order for dissolving the marriage on the petition filed by the respondent. Only on the alleged ground of 'misunderstandings', the trial Court has granted the decree of divorce, which is not a ground for dissolution of marriage as contemplated under Section 13(1) of the Hindu Marriage Act.

10) For the aforesaid reasons, this appeal is allowed by setting aside the order and decree dated 28.08.2003 in H.M.O.P. No.37 of 1999 on the file of learned Senior Civil Judge, Vizianagaram. No order as to costs. As a sequel, miscellaneous petitions if any pending shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA

RAO
March 19, 2015
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