

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

C.M.A.Nos.997 and 1056 of 2014

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

Since both these appeals arise out of the very same common order and decrees dated 24.03.2014 in O.P.Nos.17 of 2012 and 7 of 2010 passed by the learned Senior Civil Judge, Nirmal, Adilabad District, they are heard together and being disposed of by this common judgment.

2. The O.P.No.17 of 2012 was filed by the appellant/husband (Sri Aleti Rama Reddy) against the respondent/wife (Smt. A. Sandhya) seeking dissolution of their marriage performed on 21.3.2001 at Narsapur-G Village, Dilawarpur Mandal, Adilabad District, on the ground of mental cruelty under Section 13(i)(ia) of Hindu Marriage Act, 1955 (for brevity "the Act"). The O.P.No.7 of 2010 was filed by the wife under Section 9 of the Act, seeking restitution of conjugal rights. As the restitution of conjugal rights petition was allowed and the divorce petition was dismissed by the lower Court by the common order and decrees dated 24.03.2014, impugning the same the husband as appellant filed these two appeals with the contentions in the grounds of appeals, that the common order of the lower Court is erroneous, contrary to

law and weight of evidence, that the lower Court should have granted divorce and thereby went wrong in allowing the relief for restitution of conjugal rights and dismissing the relief for divorce despite the evidence on record proves that the respondent/wife never shown any love and affection, that she suffers by psychological disorder, that she was suspecting him whenever he works with female colleagues being the Pharmacist in the Military Hospital and by picking up quarrels and creating problems, that she was threatening to commit suicide by pouring kerosene and also once she even bolted the door from inside and did not allow him to enter into the house from which he felt mental shock apprehending that she would commit suicide and ultimately having left to her parents house in September, 2008, she has been staying there away to him and her case for restitution of conjugal rights is nothing but a counter-blast to his case for divorce and hence to set aside the common order and decrees of the lower Court by dissolving the marriage.

3. Sri M.A.K. Mukheed, learned counsel for the appellant reiterated the contentions that were raised in the grounds of appeals supra in seeking to allow the appeals by a decree of divorce.

4. Whereas, it is the contention of Sri Damodar Rao, learned counsel for the respondent/wife in both the appeals that, for this Court while sitting in appeal, merely because some other view is also possible, that cannot be

a ground to interfere, apart from no merits for interference with the lower Court's well considered common order with having fresh in mind the facts from recording the evidence by proper appreciation on facts and law and supported by reasons, more particularly from paras-14 and 16 of the common order. It is therefrom contended in support of the lower Court's order in dismissing the petition filed by the appellant/husband for divorce and in decreeing the petition filed by the respondent/wife for restitution of conjugal rights and hence to dismiss both the appeals.

5. Heard learned counsel for the parties at length and perused the material on record.

6. Now, the common points that arise for consideration are —

(i) Whether there are any grounds for the appellant/husband to seek divorce on the ground of mental cruelty and, if so, whether the impugned common order of the lower Court dismissing O.P. for divorce and allowing O.P. for restitution of conjugal rights filed against him by the respondent/wife is unsustainable and require any interference by this Court, while sitting in appeal against the same and, if so, with what observations?

(ii) To what result?

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In re.Point No.1:

7. There is no dispute about the factum of solemnization of marriage between the appellant/husband and respondent/wife as per Hindu rights and customs on

21.3.2001 and after the marriage, both of them lived together for a period of two years at Boath and out of the wedlock, after transfer of appellant/husband from Jodhpur, while he was working at Calcutta, they were blessed with a male child on 9.6.2005. The main ground in seeking divorce, as per his petition averments, is that, the respondent/wife made attempts for four times to commit suicide by pouring kerosene on her and once, while working at Jodhpur, she bolted from inside and did not allow him to enter into the house, that caused mental cruelty, besides she was accusing him by suspecting his fidelity for the sin of his working with female colleagues from nature of his employment as Pharmacist in the Military Hospital.

8. In support of the said petition averments, he filed his chief-examination as P.W.1. However, when coming to his cross-examination, he deposed that his wife once made an attempt to commit suicide by pouring kerosene and she bolted from inside, while he was working at Jodhpur, and he felt mental stress of she would commit suicide and then he called his neighbours, including P.W.2. P.W.2 was also cause examined by him in support of his averments in the petition. Coming to the evidence of P.W.2, what he categorically deposed in his cross-examination is that only once he went to the house of the appellant and respondent while they were living together, that too, he met them at the Railway Station and not at

their house. So, what P.W.1 stated in his evidence in support of what he averred in his petition of she bolted from inside to commit suicide and then he called his neighbours, including P.W.2, is proved false from what P.W.2 deposed of he did not go to their house but met at Railway Station only. Even coming to the so called attempt of committing suicide four times, it is even averred in his petition, his evidence is in variance to his plea, more particularly with reference to the chief-examination of P.W.2 that she made attempts to commit suicide by pouring kerosene. Even in the cross-examination, when P.W.2 categorically stated that he never went to their house, but met at the Railway Station, the question of his witnessing any alleged occurrence, even once of her attempting to commit suicide by pouring kerosene, does not arise. Apart from it, the so called incident of her attempt to commit suicide by pouring kerosene, from the very petition averments, was before his transfer to Assam. The evidence of P.Ws.3 to 5 is practically hearsay. In fact, the appellant/husband deposed that subsequent to the marriage, when the appellant/husband was transferred to Assam, they lived together for four months and even thereafter, according to him, from Assam both of them went to Boath and from there to Narsapur (G) Village, where she was taken to her parents house. Even according to the appellant/husband, the elders advised the respondent/wife and she admitted her mistakes and

asked for pardon stating that she would not repeat the same in future, which version of him even true, that tantamounts to condoning of her mistakes, and those are not available later to take it as a ground for cruelty. Further, when the appellant/husband was transferred from Assam to Pune, the respondent/wife lived with him for four months and thereafter he was transferred from Pune to Jodhpur and then she was pregnant and she gave birth to a male child, while he was working at Calcutta having been transferred from Jodhpur, where he further deposed was that after he was transferred from Jodhpur to Jhansi, he wanted to take her to Jhansi, for which she did not agree. Even from this, when all these acts of the respondent/wife were condoned by him, the question of availability of the ground of the so called attempts to commit suicide, that constitute mental cruelty, does not arise at all. Further, for his legal notice dated 28.5.2007, admittedly, she cause issued a reply stating that she was subjected to harassment for additional dowry and for her no fault and is willing to join and hence to take her for marital life. It is borne by record that it was she that addressed a letter to the Commanding Officer stating unable to survive and at the instructions of the Commanding Officer, she joined his company therefrom within no time. Even according to his further case, the couple came to Boath for the tonsuring ceremony of their male child and she left. It is quite unbelievable. In fact,

according to her, she was later beaten and sent to her parents house at G.Narsapur village and she later sent with her child and her mother to Jhansi, where he beat her and driven her out. He did not even file the notice and reply to know what are the contents of his notice and, in particular, regarding her alleged suicide attempts and bolting from inside.

9. Therefore, having regard to the above, when the lower Court scanned the evidence and come to a conclusion that the appellant/husband failed to establish the allegation of cruelty, in dismissing the petition for divorce he sought, for this Court, while sitting in appeal, there is nothing to interfere with the well considered order of the lower Court.

10. Even coming to the order impugning the grant of restitution of conjugal rights, there is nothing to show that the respondent/wife left the company of the appellant/husband without any reasonable or justifiable cause and living away at her parents house on her own by refusing his requests to join. Thus, there is nothing to interfere with the impugned order of the lower Court in allowing the petition for restitution of conjugal rights.

11. Accordingly, the Point No.1 is answered against the appellant/husband.

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In re.Point No.2 :

12. In the result, both the appeals are devoid of

merit and accordingly, they are dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

REDDY

JUSTICE R. SUBHASH

RAO
04.03.2015.
Msr

Dr. JUSTICE B.SIVA SANKARA

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