

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

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CIVIL MISCELLANEOUS APPEAL No.1046 of 2014

JUDGMENT: *(Per Hon'ble Sri Justice R. Subhash Reddy)*

Though the matter is listed under the caption "interlocutory", at the request of learned counsel for the appellant, the appeal itself is taken up for disposal.

This appeal, under Section 28 of the Hindu Marriage Act, 1955, is filed aggrieved by the order and decree dated 05.09.2014 passed in O.P.No.74 of 2012 on the file of the Senior Civil Judge, Proddatur, whereby the petition filed by the appellant-wife for dissolution of marriage and for grant of divorce on the ground of cruelty, was dismissed.

For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P.

The averments made in the petition are as follows:

The marriage of the petitioner with the respondent was celebrated on 01.07.2000 at Tirumala as per Hindu Rites and Customs. At the time of marriage, the petitioner's parents did not present cash or gold ornaments, as the petitioner was having love affair with the respondent. It is stated that out of their wedlock, they were blessed with two male children namely Krishna Chaithanya Reddy and Mahidhar Reddy. It is the specific allegation of the petitioner

that during her second pregnancy, the respondent used to come home daily in a drunken state and beat her indiscriminately suspecting her character. It is also the case of the petitioner that the respondent deserted her for the last one year without any reason and at the request of village elders, he joined her for some time and again started harassing her physically and mentally. Hence, the present petition was filed for grant of decree of divorce on the ground of cruelty.

Before the trial Court, though notice was served on the respondent, there was no appearance on his behalf and, as such, he was set *ex parte* on 11.12.2012.

On behalf of the petitioner, she herself was examined as PW.1 and, in support of her case, one J.Bhanumathi, a resident of Proddatur Town, was examined as PW.2 and Exs.A1 and A2 were marked. On behalf of the respondent, no oral or documentary evidence was adduced.

Having considered the oral and documentary evidence on record, the trial Court dismissed the O.P on the ground that the evidence of the petitioner is not supported by any independent witness.

As notice was not served on the respondent, this Court, by order dated 09.06.2015, permitted learned counsel for the appellant to serve personal notice on the respondent and file proof of service. Today learned counsel

for the appellant states that the respondent is served and he filed a memo to that effect in USR.No.3152 of 2015. However, in spite of notice being served on the respondent, there is no appearance on his behalf.

In this appeal, learned counsel for the appellant-petitioner contended that during second pregnancy of the petitioner, the respondent used to beat the petitioner indiscriminately suspecting her character. It is further contended that in spite of the evidence of the petitioner being corroborated by PW.2 and also remained unrebutted in the absence of any evidence on behalf of the respondent, the trial Court disbelieved the evidence of the petitioner without any reasons, which is unjustified. It is also submitted that PW.2 has specifically stated in her evidence that she is personally aware of the parties to the petition, but without considering the same, the trial Court discarded her evidence merely on the ground that she is not a resident of the village of the petitioner.

Having heard learned counsel for the appellant, we have perused the impugned order and other material available on record.

Though the petitioner has specifically stated in the affidavit filed in lieu of her chief-examination that the respondent was suspecting her character and used to beat her indiscriminately, the trial Court disbelieved the same on the ground that it is not supported by any independent

witness. Further, one Bhanumathi, a resident of Proddatur Town, was examined as PW.2 on behalf of the petitioner and, in the affidavit filed in lieu of her chief-examination, she stated that she knows the parties to the petition and that the respondent was harassing the petitioner. However, the Court below discarded the evidence of PW.2 on the ground that she is resident of Proddatur Town, which is at a distance of 15 kms from the village of the petitioner. When there is no evidence on behalf of the respondent and the evidence of the petitioner is supported by PW.2, we are of the view that there is no reason for the trial Court to reject the claim of the petitioner for grant of decree of divorce on the ground of cruelty, by discarding the evidence of PW.2. The allegation that the respondent used to beat the petitioner suspecting her character constitutes cruelty, for grant of decree of divorce. As no valid reasons were assigned by the trial Court for not accepting the claim of the petitioner, we are of the view that the petitioner has established the ground of cruelty for dissolution of her marriage with the respondent and she is entitled for grant of decree of divorce.

For the aforesaid reasons, the order under appeal is set aside. Consequently, O.P.No.74 of 2012 is allowed and the marriage between the petitioner and the respondent is dissolved by granting decree of divorce.

Accordingly, the Civil Miscellaneous Appeal is allowed.

No order as to costs.

Miscellaneous petitions, if any, pending in this appeal,
shall stand closed.

**JUSTICE R.SUBHASH
REDDY**

**JUSTICE A. SHANKAR
NARAYANA**

30th June, 2015
v v