

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No. 4 OF 2007

Dated.13-10-2016

Varisi Latha @ Subhadra,
W/o. Devendrudu, Hindu,
Aged 25 years, House wife,
R/o.H.No.10/12, HM Colony,
Uttarpara, Hoogly, West Bengal.

Appellant.

AND

Varisi Devendrudu,
S/o. Vasu, Hindu,
Aged 27 years, Unemployee,
R/o.Peda Jagannadhapuram Village,
Meliaputti Mandal,
Srikakulam District.

Respondent.

Counsel for Appellant : Mr. Srinivas Mallampalli.

Counsel for Respondent : Mr. Tarlada Rajasekhar Rao.

This Court made the following:

JUDGMENT: (Per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This Civil Miscellaneous Appeal arises out of order, dated 30.08.2006, in M.O.P. No.96 of 2004 on the file of the Court of Additional Senior Civil Judge, Srikakulam (for short, 'the lower Court'); whereby, he has decreed the said O.P. for dissolution of marriage between the appellant and respondent.

At the hearing, learned counsel for the respondent, submitted that the marriage between the parties was solemnized on 28.04.2002 and that except for two months after marriage, the spouses have not lived together and that they have been living separately.

Learned counsel for the appellant has not disputed this submission.

In ***Samar Ghosh Vs. Jaya Ghosh***¹, the Supreme Court held that once the parties are separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage is broken down and that the Court, no doubt, would seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. It has further held that the consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties. The Supreme Court referred to and relied upon its earlier judgment in ***Naveen Kohli Vs. Neelu Kohli***², wherein it is held as under:

“We have been principally impressed by the consideration that once the marriage has broken down beyond, repair, it would be unrealistic for the law not to take notice of the fact, and it would be harmful to society and injurious to the

¹ 2007 (3) ALT 62 (SC)

² (2006) 4 SCC 558

interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie, the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.

Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

The other majority view, which is shared by most jurists, acceding to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising there from.

When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, it becomes obvious that the approach adopted by the High court in deciding this matter is far from satisfactory.”

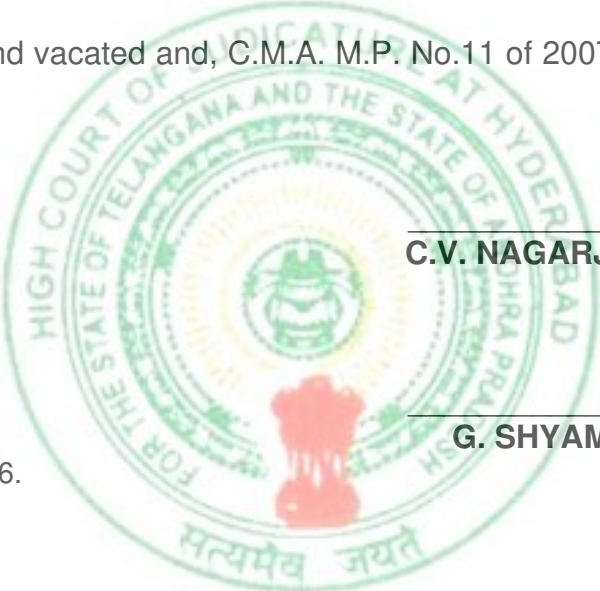
Having regard to the fact that both the parties have been living separately for nearly 15 years, the ratio laid in the aforementioned two

judgments applies in all force to the instant case. In the absence of any reasonable prospects of reunion of the parties, the marriage between them is irretrievably broken down as held by the Supreme Court in the aforementioned judgments.

For the aforementioned reasons, we do not find any reason to interfere with the decree of the dissolution of the marriage, granted by the lower Court.

The Civil Miscellaneous Appeal is, accordingly, dismissed.

As a sequel to dismissal of the Civil Miscellaneous Appeal, *interim* order shall stand vacated and, C.M.A. M.P. No.11 of 2007 is dismissed as infructuous.



C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

Date: 13-10-2016.
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THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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CIVIL MISCELLANEOUS APPEAL No.4 OF 2007

(Judgment of the Division Bench delivered by
Hon'ble Sri Justice C.V. Nagarjuna Reddy)

Date. 13-10-2016

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