

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE M.S.K.JAISWAL

CMA.No.40 of 2007

Date:20.10.2016

Between:

N.Upender Reddy

..... Appellant

And:

Sulochana

....Respondent

Counsel for the appellant: Maruthi Jadav

For Mr. B.S.Prasad

Counsel for the respondent: None appeared



The Court made the following:

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

Feeling aggrieved by dismissal of O.P.No.27 of 2006, filed by him for dissolution of his marriage with the respondent, by the learned II Additional Senior Civil Judge, Ranga Reddy District at N.T.R.Nagar, Hyderabad, the unsuccessful petitioner therein filed this Civil Miscellaneous Appeal.

Though notice was received by the respondent, neither she appeared before us nor has engaged any counsel.

We have heard Mr. Maruthi Jadav, learned counsel representing Mr. B.S.Prasad, the learned counsel for the appellant and perused the record.

The marriage of the parties was solemnised on 18.5.1978 and they were blessed with two children, one female child and one male child in the years 1985 and 1989, respectively. It is the pleaded case of the appellant that the respondent left his company along with his two children in the year 1989 and since then, she has been living separately along with her parents. The respondent has filed M.C.No.11 of 1990 in the Court of the learned Additional Munsif Magistrate, Bhongir, wherein a sum of Rs.500/- per month was awarded in her favour towards maintenance. The appellant has pleaded that he has been complying with the said order of maintenance. He has

further pleaded that in a case filed by the respondent under Section-498-A of the Indian Penal Code, he was convicted and sentenced to undergo rigorous imprisonment for two years and that Criminal Appeal No.32 of 2003 filed before the learned V Metropolitan Sessions Judge, Nampally, Hyderabad against the said judgment was dismissed. At that stage, the appellant has filed O.P.No.37 of 2003 for dissolution of marriage mainly on the grounds of cruelty and desertion. Both the parties adduced oral and documentary evidence. On appreciation of the same, the lower Court has dismissed the O.P.

Mr. Maruthi Jadav, learned counsel representing Mr. B.S.Prasad, the learned counsel for the appellant, submitted that the appeal filed by the appellant against his conviction was confirmed by the learned V Metropolitan Sessions Judge, Nampally, Hyderabad in CrI.A.No.32 of 2003, but the judgments of the trial Court and the appellate Court were set aside by this Court in the Criminal Revision Case. He has further submitted that the respondent has been living separately from the appellant for more than 25 years and that, on this ground alone, the appellant is entitled for a decree for dissolution of marriage.

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

¹ 2007 (3) ALT 62 (SC)

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 *Kohli Vs. Neelu Kohli*², wherein it is held as under:

“We have been principally impressed by the consideration that once the marriage had 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 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

² (2006) 4 SCC 558

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.”

The very fact that the respondent has not entered appearance, despite receipt of notice from this Court shows that she is not interested in opposing this Civil Miscellaneous Appeal.

In the afore-mentioned facts and circumstances of the case and in view of the principles laid down by the Supreme Court in the decisions referred *supra*, we are of the opinion that the lower Court has committed a serious error in dismissing the petition for divorce. Hence, the order of the lower Court is set-aside and O.P.No.27 of 2003 on the file of the II Additional

Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad
is decreed.

The Civil Miscellaneous Appeal is, accordingly, allowed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

20th October 2016

DR

