

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE
STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CIVIL MISCELLANEOUS APPEAL No.314 OF 2006

Between:

S. Brahmanandam. --- Appellant.

And

Smt. S. Rama Devi. --- Respondent.

Date of Judgment Pronounced : 30.08.2016

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE G. SHYAM PRASAD

1. Whether Reporters of Local newspapers
May be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may
be marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordship wish to see the
Fair copy of the judgment? Yes/No

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

***HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**

AND

***HON'BLE SRI JUSTICE G. SHYAM PRASAD**

+ CIVIL MISCELLANEOUS APPEAL No. 314 OF 2006

%Dated.30-08-2016

S. Brahmanandam, S/o. Laxminarayana,
Aged about 59 years, Retired Employee,
R/o.Bharathinagar Colony, LIG Qr. No.921,
BHEL, Ramachandrapuram,
Medak District.

Appellant.

VERSUS

\$ Smt. S. Rama Devi, W/o. Brahmanandam,
Aged about 36 years, Tailoring and Beedi work,
R/o.H.No.3-10-969/E, Suryanagar, Warni Road,
Nizamabad Town and District.

Respondent.

! Counsel for Appellant : Mr. A. Bhaskara Chary.

^ Counsel for Respondent : Mr. Damodar Rao.

< GIST :

> HEAD NOTE :

? Cases referred :

1. 2007 (3) ALT 62 (SC)
2. (2006) 4 SCC 558

This Court made the following:

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

This Civil Miscellaneous Appeal is filed against order and decree, dated 01.12.2005, in Original Petition No.19 of 2004 on the file of the Senior Civil Judge at Sangareddy (for short, 'the lower Court').

The appellant has married the respondent on 13.06.1982, after the death of his first wife. A son and daughter were born out of their wedlock. The appellant specifically alleged that the respondent has left his company without intimation, at the instigation of her brother one Vijay Babu. He has further alleged that the respondent was always insisting for transfer of the properties in her name and, as the appellant turned down the demands of the respondent, she left his company and filed Maintenance Case No.87 of 1995 on the file of the Court of Judicial Magistrate of First Class, Nizamabad on 07.12.1995; wherein, an order was passed on 10.04.1997 rejecting the claim for maintenance. It is his further case that there was no matrimonial relationship between himself and the respondent after the birth of their daughter and son and till the date of filing of the petition, on 16.06.2004, for dissolution of marriage.

The respondent filed a counter-affidavit denying the allegations made by the appellant.

In support of his case, the appellant has examined himself as PW.1 and also examined PWs.2 and 3 and got Ex.A-1 marked on his side. On behalf of the respondent, she examined herself as RW.1 and she has not adduced any documentary evidence. On appreciation of the oral and documentary evidence, the lower Court has dismissed the Original Petition.

The appellant has filed the Original Petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (For short, 'the Act'). Clauses (ia) and (ib) of sub-section (1) of Section 13 of the Act read as under:

“13. Divorce: (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party:

(i)

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.”

From the above reproduced provision, it is evident that for securing the decree for dissolution of marriage it is enough if the appellant is able to satisfy either of the two clauses *i.e.*, (ia) or (ib). A perusal of the record shows that in her evidence the respondent while denying that she has deserted the appellant, however, admitted that since November, 1995 she was residing in Nizamabad and she filed a Maintenance Case thereat. She has further admitted that she has shown her address at Nizamabad. According to her, she resided at Nizamabad between 1995 and 1998 and, thereafter, she stayed at the house of her mother at Warangal.

Ex.A-1 is a certified copy of order, dated 10.04.1997, in M.C. No.87 of 1995, on the file of the Court of Principal District Munsif at Nizamabad. In the said order, a finding was rendered by the Court holding that the respondent herself left the house of the appellant, on her own, without any sufficient cause or reason and that, therefore, the appellant cannot be said to have neglected her to maintain.

Though it appears from the pleadings of the parties that the rejection of claim of the respondent for maintenance under Ex.A-1 was, subsequently, set-aside by this Court and, on remand, the respondent was granted maintenance, the fact however remains that the respondent continued to live separately since 1995 till the appellant has filed the O.P. for divorce and even thereafter also she was living separately. Except taking a stand in her cross-examination that she was necked out, no evidence was placed by her in order to prove this plea. She appeared to be rest content with securing maintenance and living separately. She has not made any attempt, whatsoever, to join the company of the appellant, at least after she succeed before the Court in claiming maintenance. This conduct of the respondent, in our opinion, clearly proves that she is living away from the appellant without any justifiable reason. A long and continuous separation by the respondent without any attempt to reconcile with the appellant gives rise to a reasonable presumption that she has deserted the appellant forever.

A marriage signifies union of two bodies and souls. As long as the couple lives in a congenial atmosphere with amiable and amicable understanding, they enjoy the marital bliss. An occasional quarrel between the spouses is not uncommon. But quarrels of the nature as between a cat and mouse or a snake and mongoose make the life of both the spouses miserable. Once the cord of affection and mutual trust gets snapped, it is not easy to restore the same. The Court of first instance, nevertheless, must make every effort for the couple's reunion. But once its efforts do not fructify, forcing the couple to stay together will prove counter productive. It is always desirable for warring spouses, who developed incompatibility, to get separated and lead their respective lives

in peace, rather than being forced to live together in an unhappy and surcharged atmosphere without peace of mind.

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 ***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 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

¹ 2007 (3) ALT 62 (SC)

² (2006) 4 SCC 558

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.”

In the aforementioned 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; O.P. No.19 of 2004 is decreed.

The Civil Miscellaneous Appeal is, accordingly, allowed.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

Date: 30-08-2016.

Note: Mark L.R. Copy.
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**THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND**

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

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CIVIL MISCELLANEOUS APPEAL No.314 OF 2006

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

Date. 30-08-2016

DSH