

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

CMA.Nos.4441 of 2004 and 621 of 2006

Between:

Konka Srinivasa Rao,
S/o Venkata Subbaiah

..... Appellant

And:

Konka Sridevi,
W/o Srinivasa Rao

....Respondent

Date of Judgment Pronounced: 18-11-2016

Submitted for Approval.

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

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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|---|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the judgments ? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment ? | Yes/No |

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

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....Respondent

! Counsel for the appellant: Mrs. D.Vasavi Ratnakumari

For Mr. Sarva Bhouma Rao

^ Counsel for the respondent: Mr. Sarang J.Afzul Purkar

For Mr. L.Ravichander

<GIST:

>HEAD NOTE:

? Cases cited.

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

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Counsel for the appellant: Mrs. D.Vasavi Ratnakumari
For Mr. Sarva Bhouma Rao

Counsel for the respondent: Mr. Sarang J.Afzul Purkar
For Mr. L.Ravichander

The Court made the following:

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

Since the parties in both these Civil Miscellaneous Appeals are common, they are heard together and taken up for disposal.

Civil Miscellaneous Appeal No.4441 of 2004 arises out of order, dated 31.8.2004, in O.P.No.60 of 2002, whereby the Additional Senior Civil Judge, Ongole has dismissed the said O.P. filed by the appellant for dissolution of marriage with the respondent.

Civil Miscellaneous Appeal No.621 of 2006 is filed by the appellant feeling aggrieved by the decree passed in O.P.No.18 of 2005, filed under Section-9 of the Hindu Marriage Act, 1955 (for short 'the Act') for restitution of conjugal rights with the appellant, on the file of the Additional Senior Civil Judge, Ongole.

In O.P.No.60 of 2002, the main ground on which the appellant has sought for dissolution of marriage with the respondent is that she has deserted him without reasonable cause and that she has been refusing to join him. In support of his plea, the appellant has examined himself as P.W-1 and the respondent has examined herself as R.W-1 and also examined R.Ws.2 and 3 on her behalf. In his evidence as P.W-1, the appellant has deposed that his marriage with the respondent was performed on 07.8.1987; that he has taken the respondent to his house to lead marital life; that right from the inception, he was not feeling happy as the respondent developed some sort of

aversion towards him and he did not have happy conjugal life; that despite his unhappiness, the appellant has tolerated the behaviour of the respondent; that in the later half year of 1998, when she was pregnant, the respondent has left him and gone to her parents' house; that though the appellant has gone to his father-in-law's house requesting him to send the respondent back with him, the latter has not joined him; and that the mediation held in this regard also proved futile. The appellant further deposed that after the child was born, he has again requested the respondent to join him in October, 1999; that instead of joining him, the respondent filed O.P.No.90 of 2000 for dissolution of marriage, which was dismissed for non-prosecution; and that the respondent has later filed a criminal case against the appellant under Section-498-A IPC, which was closed by the Police after due enquiry. The appellant further deposed that as he filed O.P.No.60 of 2002 for grant of decree for divorce, the respondent has filed O.P.No.11 of 2003 for custody of the child as a counter-blast.

The respondent examined herself as R.W-1 and deposed that right from the beginning, the appellant was demanding heavy money; that about 7 or 8 months after the marriage, as Rs.1 lakh was not given to him, he has developed dislike towards her; that in June, 1998, when she was pregnant, the appellant has beaten and necked her out to bring a sum of Rs.1 lakh and as she had no other go, she started living with her parents; that

the appellant was not willing to take her back as the latter's parents were not in a position to pay the sum of Rs.1 lakh demanded by the appellant; that in March, 2001, she went to the matrimonial home along with an elder by name Mohan Rao; that after six months of her joining him, the appellant again started demanding money; that in the month of December, 2001, the respondent's in-laws have necked her out of the house for non-payment of additional dowry; that again in March, 2002, she was driven out of home; that with great difficulty a sum of Rs.10,000/- was arranged to be paid to the appellant through an elder by name Subba Rao; that again in June, 2002, the remaining amount of Rs.90,000/- was demanded; that her in-laws went to her father and demanded the sum of Rs.90,000/-; and that vexed with the behaviour of the appellant and his parents, she has filed a criminal complaint before the learned III Additional Munsif Magistrate, Ongole. R.Ws.2 and 3, who have acquaintance with the family of the respondent, sought to support the plea of the respondent by stating that a sum of Rs.10,000/- was paid to the appellant towards additional dowry on his demand.

The Court below relied upon the evidence of the respondent and R.Ws.2 and 3 and rendered a finding that the respondent was driven out of the home by the appellant for non-payment of additional dowry and that therefore, the act of the respondent leaving the matrimonial home cannot be

construed as desertion. The Court below, however, has failed to take note of the fact that the criminal complaint given by the respondent against the appellant under Section-498-A I.P.C ended in acquittal. This fact would evidently show that the appellant has not harassed the respondent. By the mere *ipsi-dixit* of R.Ws.2 and 3, it is not safe to conclude that the appellant was demanding additional dowry and that, due to non-compliance of his demand, he has driven the respondent out of his house. Besides the fact that the criminal complaint filed by the respondent under Section-498-A IPC ended in acquittal of the appellant, no piece of documentary evidence such as any further complaints against the appellant for dowry harassment has been filed. The respondent has not even got issued any legal notice to the appellant to the effect that she is willing to join him and requested him to take her back to the matrimonial home. In the absence of such evidence, we are of the opinion that it is not safe to place reliance on the mere *ipsi-dixit* of the respondent and R.Ws.2 and 3.

From a perusal of the record, it appears that even during the pendency of the proceedings before the lower Court, no effort was made by the respondent requesting the lower Court to convince the appellant to take her back to her matrimonial home. This conduct of the respondent, in our opinion, clearly suggests that the latter herself has abandoned the matrimonial home without sufficient cause and such abandonment

constitutes ‘desertion’, a ground which is enumerated under Section-13(1)(ib) of the Act.

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 has 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.

¹ 2007 (3) ALT 62 (SC)

² (2006) 4 SCC 558

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.”

The afore-mentioned dicta of the Supreme Court applies in all fours to the present case because even as per the respondent, she has been living separately from the end of 2001. 15 years passed by since then, and there are no chances of

reunion of the parties. Therefore, we are of the opinion that this is a fit case where the marriage between the appellant and the respondent needs to be dissolved.

We are now left with the aspect of permanent alimony to be paid by the appellant. Though no formal application has been filed by the respondent in this regard, we have asked the learned counsel for the appellant to ascertain from his client on the amount he is willing to pay either in cash or in the form of property to the respondent towards permanent alimony. After instructions, learned counsel for the appellant submitted that his client is willing to convey an extent of Ac.1.00 of land in Survey No.460-28 of B.Madduluru Village or in Survey No.174-1A of Chilakapadu Village, Santanutalapadu Mandal and pay a sum of Rs.2 lakhs in cash to the respondent towards permanent alimony.

Learned counsel for the appellant further submitted that the process of registration and conveyance of the aforementioned extent of land and payment of Rs.2 lakhs to the respondent will be completed within three months from today.

For the foregoing reasons, the Civil Miscellaneous Appeals are allowed and O.P.No.60 of 2002 is decreed and O.P.No.18 of 2005 is dismissed, subject to the condition of payment of permanent alimony by the appellant to the respondent, as agreed to be paid as indicated hereinbefore.

As a sequel to disposal of the appeals, CMAMP.Nos.15774
of 2004, 1842 of 2015 and 1224 of 2006 are disposed of as
infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

18th November 2016

Note: L.R. copies to be marked.

(B/o)

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