

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

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

C.M.A.No. 849 OF 2006

DATED 27TH SEPTEMBER, 2016

Between:

Korrapati Nagendramma @ Nagendram ... Appellant

AND

Korrapati Narasimha Rao ... Respondent

Counsel for the appellant : Sri P.Vijaya Kiran

Counsel for the respondent : Sri N.Sreerama Murthy



THE COURT MADE THE FOLLOWING

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

This civil miscellaneous appeal arises out of order dated 07-03-2006 in H.M.O.P.No. 200 of 2000 on the file of the Court of Principal Senior Civil Judge, Guntur (for short, 'the lower Court'), whereby he has granted decree for dissolution of marriage between the appellant and the respondent.

2. We have heard Sri P.Vijaya Kiran, learned counsel for the appellant, and Sri N.Sreerama Murthy, learned counsel for the respondent.

3. The appellant is the wife of the respondent. As serious matrimonial disputes between them arose, the respondent filed the aforementioned H.M.O.P. for grant of decree of divorce by dissolving the marriage under Section 13 (1) (ia) and (ib) of Hindu Marriage Act, 1955. It is the pleaded case of the respondent that on account of the cruelty on the part of the appellant, he has been living separately from 1993 onwards. In support of this plea, the respondent has examined himself as P.W.1. From the evidence on record, it could be seen that, while it is the case of the respondent that he has been living separately from 1993 onwards, even the appellant has admitted that for the last seven or ten years, they have been living separately and that there were no efforts on anyone's part to reunite them.

4. In our opinion, the spouses, who are living for substantially long time, cannot be compelled to live together by intervention of Court. This view of ours is fortified by the judgment of the Supreme Court in ***Samar Ghosh Vs. Jaya Ghosh***¹, wherein it was 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

¹ 2007 (3) ALT 62 (SC)

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 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

² (2006) 4 SCC 558

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.”

5. Even if we accept the version of the appellant that they were living separately for ten years prior to disposal of the case, ten more years have elapsed after the disposal of the case. This means that the parties are living separately for more than twenty years. Sri N.Sreerama Murthy, learned counsel for the respondent, submitted that the parties are continuing to live separately and that there is no possibility for their reunion.

6. In the aforementioned facts and circumstances of the case, no purpose will be served by interfering with the well considered order of the lower Court. The civil miscellaneous appeal is, accordingly, dismissed.

7. As a sequel to dismissal of the civil miscellaneous appeal, C.M.A.M.P.Nos. 1709 and 1710 of 2006 shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J.

G.SHYAM PRASAD, J.

Date: 27-09-2016.

JSK