

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

**AND**

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

**CIVIL MISCELLANEOUS APPEAL No. 243 OF 2005**

**DATE: 11-11-2016**

Pulijala Venkata Laxmi, W/o. Raghupathi Rao,  
Aged about 36 years, Government Servant,  
R/o.H.No.6-2-1138, New Venkateshwara Colony,  
Hyderabad Road, Nalgonda. ----- **Appellant.**

**AND**

Pulijala Raghupathi Rao, S/o. Seetha Rama Rao,  
Aged about 43 years, Private Employee,  
R/o.H.No.6-3-126/R-19, Savarkar Nagar,  
Ramgiri, Nalgonda. ----- **Respondent.**

**Counsel for Appellant : Mr. M.R.S. Srinivas.**

**Counsel for Respondent : Mr. Damodar Rao.**



**This Court made the following:**

**JUDGMENT:** (Per Hon'ble Sri Justice G. Shyam Prasad)

1. This Civil Miscellaneous Appeal is filed against order and decree, dated 28.02.2005, in Original Petition No.28 of 2003, on the file of the Court of Senior Civil Judge, Nalgonda (For short, 'the lower Court'); whereby, he has decreed the said O.P. for dissolution of marriage between the appellant and respondent.

2. Brief facts leading to filing of this Appeal are: The marriage of appellant with the respondent was performed on 09.04.1991, by which time the couple were unemployed. Subsequently, the appellant gave birth to a female child on 20.03.1992. The appellant hails from West Godavari and the respondent hails from Nalgonda District. Since the spouses belong to different regions, misunderstandings cropped up between them. As the respondent did not secure any job, the appellant had left his company and went to her parents' home at Nalgonda. When the respondent, after securing a private job of Teacher at Kadthal village of Mahaboobnagar District, tried to take back the appellant into his society, she refused to join him, instead asked the respondent to put up a separate residence away from his mother and brothers. Subsequently, the appellant secured temporary job as a Home Guard. As the appellant failed to join the company of the respondent, he filed a Petition in O.P. No.13 of 1996 for restitution of conjugal life before the lower Court. The lower Court dismissed the said Petition, on 10.04.1998, observing that the appellant had not deserted the respondent willfully, that she is an employee and getting salary for the benefit of the family, and that her living away from the respondent is justified. Subsequently, when the respondent along with mediators tried to take back the appellant into his society, she did not join him and as such she caused mental torture to the respondent. Further, the appellant secured a permanent job as Bailiff in the Court at Bhongir,

Nalgonda District. After securing the job, the appellant became more adamant and stubborn, as she was earning more salary than the respondent. Later, during the Dasara festival of 2002, on the advice of elders, the couple had a trip to Shirdi but during that trip also, the appellant did not mingle with the respondent and did not maintain cordial relation with him. Vexed with the attitude of the appellant, the respondent had filed the instant O.P. No.28 of 2003, for grant of decree of divorce, under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (For short, 'the Act'), on the ground of willful desertion.

4. During the course of trial, on behalf of the respondent herein PWs.1 to 3 were examined and Ex.P-1 was marked; on behalf of the appellant, RWs.1 to 4 were examined and Exs.B-1 to B-2 were marked.

5. Upon hearing the arguments of both sides and perusing the oral and documentary evidence, including the appellant's Maintenance Case No.9 of 2004, on the file of Judicial First Class Magistrate, Nalgonda, filed for maintenance of her daughter, and taking into account her willful desertion of the respondent since 1993 onwards, the lower Court allowed the O.P., granting decree of divorce, under Section 13(1)(ib) of the Act, by passing a detailed order, taking into consideration various decisions of this Court. Aggrieved thereby, the appellant-wife preferred this Appeal.

6. The respondent has filed the Original Petition under Section 13(1)(ia) and (ib) of 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.”

7. From the above reproduced provisions, it is evident that for securing the decree for dissolution of marriage it is enough if the respondent is able to satisfy either of the two clauses *i.e.*, (ia) or (ib) of Section 13(1) of the Act. A perusal of the record shows that in her evidence the appellant while denying that she has deserted the respondent, however, admitted that since 1993 she was residing away from the respondent and filed a Maintenance Case at Nalgonda, for maintenance of her daughter. Further, the appellant never allowed the respondent to talk with their daughter and nurtured her against his father. The appellant having secured a job appeared to be rest content by living with her parents and did not make any attempt, whatsoever, to join the company of the respondent. This conduct of the appellant, in our opinion, clearly proves that she is living away from the respondent without any justifiable reason. A long and continuous separate living by the appellant, without any attempt to reconcile with the respondent, gives raise to a reasonable presumption that she has deserted the latter forever.

8. At the hearing, Mr. V. Hanumanth Rao, learned counsel for the respondent, submitted that the marriage between the parties was solemnized on 09.04.1991, and a daughter was born out of their wedlock, on 20.03.1992, that thereafter, from 17.01.1993, the spouses have been living separately, that the appellant is now aged around 46 years and the respondent is aged around 53 years and that as the spouses are living

separately for more than 23 years, there is no possibility of their re-union at this stage.

9. Mr. M.R.S. Srinivas, learned counsel for the appellant, has not disputed this submission.

10. 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.

11. In ***Samar Ghosh Vs. Jaya Ghosh***<sup>1</sup>, 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.

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<sup>1</sup> 2007 (3) ALT 62 (SC)

The Supreme Court referred to and relied upon its earlier judgment in ***Naveen Kohli Vs. Neelu Kohli***<sup>2</sup>, wherein it was 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 stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

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<sup>2</sup> (2006) 4 SCC 558

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.”

12. Having regard to the fact that both the appellant and the respondent have been living separately for nearly 23 years, the ratio laid down in the aforementioned two judgments applies in all fours to the instant case. In the absence of any reasonable prospects of reunion of the parties, it must be recognised that the marriage between them has irretrievably broken down as held by the Supreme Court in the aforementioned judgments.

13. For the aforementioned reasons, we do not find any reason to interfere with the well reasoned order and decree of dissolution of the marriage between the appellant and the respondent, granted by the lower Court.

14. The Civil Miscellaneous Appeal is, accordingly, dismissed.

15. As a sequel to dismissal of the Civil Miscellaneous Appeal, *interim* order shall stand vacated and C.M.A. M.P. No.534 of 2005 shall stand dismissed as infructuous.

**C.V. NAGARJUNA REDDY, J**

**G. SHYAM PRASAD, J**

Date: 11-11-2016.  
DSH

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

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**CIVIL MISCELLANEOUS APPEAL No.243 OF 2005**

(Judgment of the Division Bench delivered by  
Hon'ble Sri Justice G. Shyam Prasad)

Date. 11-11-2016

**DSH**