

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

**AND**

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

**C.M.A.No. 304 OF 2005**

**DATED 27<sup>TH</sup> SEPTEMBER, 2016**

Between:

V.Bhavannarayana ... Appellant

AND

Valluru @ Inaganti Lakshmi Kumari ... Respondent

Counsel for the appellant : Smt P.Revathi

Counsel for the respondent : Sri C.A.R.Seshagiri Rao



THE COURT MADE THE FOLLOWING

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

This appeal arises out of order dated 28-02-2005 in H.M.O.P.No. 52 of 2002 on the file of the Court of Senior Civil Judge, Bapatla (for short, 'the lower Court').

2. The appellant, who is the husband of the respondent, filed the aforementioned O.P. seeking a decree for dissolution of marriage under Section 13 (1) (ia) of Hindu Marriage Act, 1955. It is the pleaded case of the appellant that the respondent, whom he has married after a love affair, has started behaving in a rude and adamant manner by showing scant regard to himself and his parents. It is his further pleaded case that the respondent has not even informed his parents about her delivering a baby and that for no fault on his part, the respondent has gone to her parents' house and been refusing to join him.

3. Based on the oral and documentary evidence, the lower Court made the following observations:

*"In the instant case, the marriage between the petitioner and the respondent is a love marriage performed on 06-02-1998 and the disputes started within six months and they hardly lived together with love after 28-08-1998 and the respondent is doing job and she gave birth to a child and though the respondent is transferred to a place near Bapatla, still both parties are adamant to come out of their egos ignoring the fact that their child is to be suffered most. No doubt there is break down of the marital life between the petitioner and the respondent. But the respondent is not making any serious allegations against the petitioner nor the petitioner. Hence, the chance of their re-union in the nearby future probable. The respondent has sufficient cause to live apart from the petitioner at present. Hence, I am unable to agree with the contention of the petitioner that the respondent has intention to bring cohabitation to end and thereby she is living separately from the petitioner. Hence, I hold that the petitioner is not entitled for decree of divorce as prayed for."*

The afore extracted observations are self speaking which reveal that there is not only irretrievable breakdown of the marriage but also there was no scope for reunion of both parties. However, the lower Court has expressed optimism that there is a chance of reunion in the near future.

4. At the hearing, there is no representation for the respondent. The learned counsel for the appellant submitted that during the pendency of this appeal, the parties have continued to live separately and that even in situations like passing away of the parents of the appellant and also the appellant meeting with an accident, the respondent has not even paid any visit. Learned counsel for the appellant argued that this conduct of the respondent clearly shows that she has no intention of joining her matrimonial home and live with the appellant.

5. 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. The Supreme Court referred to and relied upon its earlier judgment in **Kohli Vs. Neelu Kohli**<sup>2</sup>, 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*

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

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

*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 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.”*

6. Having regard to the facts and circumstances of the case and the law as reflected in **Samar Ghosh** (1<sup>st</sup> *supra*) and **Kohli** (2<sup>nd</sup> *supra*), we are of the opinion that not only the marriage has irretrievably broken down but also there is complete incompatibility between the parties. In these facts and circumstances of the case, we are of the opinion that it is appropriate to grant decree of dissolution of marriage between the parties.

7. Accordingly, the order under appeal is set aside. H.M.O.P.No. 52 of 2002 is decreed. The civil miscellaneous appeal is allowed.

8. As a sequel to disposal of the civil miscellaneous appeal, C.M.A.M.P.Nos. 700 and 701 of 2005 shall stand closed as infructuous.

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

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**G.SHYAM PRASAD, J.**

Date: 27-09-2016.

JSK

