

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL MISCELLANEOUS APPEAL No.1279 of 2011

DATED:- 05-01-2017

Between:

Rani Narsimha Sastry

..... APPELLANT

AND

Smt.Rani Suneela Rani

.....RESPONDENT

COUNSEL FOR THE APPELLANT : PARTY-IN-PERSON

COUNSEL FOR RESPONDENT : Sri P.SRINIVAS RAO (not present)

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL MISCELLANEOUS APPEAL No.1279 of 2011

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

The appellant is the husband of the respondent, who filed O.P.No.109/2007 on the file of the Senior Civil Judge, Amalapuram under Sec.13 (1) (i-a) & (iii) of Hindu Marriage Act seeking divorce on the ground of cruelty and incurably unsound mind suffering with mental disorder. The said O.P. was dismissed by order dated 05.09.2011, against which this appeal is filed.

2. The parties herein are referred to as they are arrayed before the Court below in O.P.No.109/2007.

3. The case of the petitioner is that his marriage was performed with the respondent on 14.08.2005 as per Hindu rites and customs at Sri Veera Venkata Satyanarayanawamy Temple, Annavaram, that he was working in Pam Pac, Hyderabad and the respondent was working as Sanskrit Lecturer, and that the petitioner had not received or demanded any dowry from the parents of the respondent. After the marriage, the petitioner and the respondent lived at Hyderabad in a rented house happily for two months, that thereafter, the respondent asked the petitioner to purchase coconut garden of an extent of Ac.0.18 cents in her name, for which, the petitioner did not concede on the ground of lack of funds. Thereafter, the respondent started quarrelling with the petitioner and his family members. The respondent used to move closely with male friends and frequently used to visit her parents without notice of the petitioner. The respondent used to serve half cooked vegetables and burnt rice of bottom bowel and that too at late hours. The respondent used to demand charges for supply of tea, washing clothes etc. The

petitioner came to know that the respondent was having illicit intimacy with one Bujji prior to their marriage and she continues the same relationship after the marriage also without knowledge of the petitioner. On 12.11.2006 the petitioner placed the matter before one D.Nagabushana Rao, the family friend of the parents of the petitioner, but the respondent did not care and created nuisance. On 15.11.2006 at the instance of her father and Bujji, she lodged a complaint against the petitioner before L.B.Nagar Police Station. When the respondent conceived, the petitioner took her to the Doctor and on the advise of the Doctor, he directed his parents to look after the health of the respondent, but the latter did not allow his family members. The respondent used to insult the petitioner by abusing him in filthy language and she even did not allow him to her bedroom to lead marital life. Due to unbearable torture meted out by the petitioner in the hands of the respondent, the petitioner was forced to resign his job in February, 2007. Hence the petition.

4. The respondent filed counter denying the contents of the petitioner and further contended that the petitioner is suspicious towards the respondent and he is a sadist. The petitioner never treated the respondent as a human and never allowed her to visit her native place. The petitioner has guilty consciousness and he is jealous of working women. The respondent never harassed the petitioner and his family members and she discharged her duties as a dutiful wife with a sense of responsibility and duty towards the petitioner and his family members. When the counseling was going on, the petitioner and his family members manhandled her and dragged her on the ground and beat her at the house of one Nagabushanarao. On 16.11.2006 the Circle Inspector of Police, L.B.Nagar Police Station conducted counseling and warned the

petitioner and his sister. The petitioner got addicted to vices and after she gave birth to a female child, he deserted her and her daughter and filed the present O.P with all false allegations. The respondent contended that the petitioner received dowry of Rs.50,000/- by way of demand draft from one Nagabhushanarao and the parents of the respondent spent Rs.1,50,000/- towards marriage expenses and the petitioner always used to ask the respondent to get more dowry from her parents, otherwise threatened to give divorce.

5. The petitioner to prove his contentions, examined himself as PW 1 and examined PW 2 and marked Exs.P1 to P29. The respondent was examined herself as RW 1 and examined one D.Nagabhushanarao, as RW 2 on her behalf and marked Exs.R1 to R3.

6. Having considered the entire oral and documentary evidence adduced on either side, the court below observed that there is no convincing material or evidence to prove the cruelty as alleged by the petitioner and accordingly dismissed the O.P.

7. The petitioner argued the case in person. He submits that the conduct of the respondent is such that it is difficult for him to continue the matrimonial tie with her and that she has subjected him to mental cruelty of such magnitude that he has no option except to seek dissolution of marriage. According to the petitioner, respondent has filed false cases against him and his family members and seen to it that he was sent to jail. He has further submitted that the respondent is also leading an unchaste life moving with her male friends more particularly with one Bujji and is neglecting the petitioner and his basic requirements. The petitioner submits that the Court below has not taken into consideration the evidence on record in proper perspective and has erroneously dismissed his petition for divorce.

8. The counsel for the respondent, though was afforded sufficient chances to make his submissions, has not availed the opportunities learning the court with no option other than closing the hearing.

9. The point for consideration is as to whether the petitioner is entitled to the decree of divorce on the grounds of mental cruelty and the respondent suffering from mental disorder of such a kind, due to which the petitioner cannot be expected to live with her?

10. The petitioner is seeking dissolution of marriage on two grounds viz., that the respondent has after the marriage treated him with cruelty and secondly, that she has been incurably of unsound mind suffering with mental disorder of such a kind that the petitioner cannot reasonably be expected to live with her. Insofar as the second ground is concerned, neither any oral nor documentary evidence has been adduced by the petitioner and even during the hearing, nothing is placed on record to show that the petitioner is entitled to the relief of dissolution of marriage on the ground set out in Section 13(1)(iii) of the Hindu Marriage Act. It is on record that the respondent is working as Lecturer in a College which she could not have been if she is suffering with any mental disorder.

11. The Hindu Marriage Act provides for dissolution of marriage on several grounds one of which is that the opposite party has been treating the petitioner with cruelty. In order to succeed on this ground, it is incumbent on the part of the petitioner to establish by a satisfactory and reasonable evidence to show that he has been subjected to acute mental pain, agony and suffering as would not make it possible for them to live together, that the entire matrimonial life of the parties has taken such a turn that it would not be reasonable to ask the petitioner to continue to live with the other party. The married life should be reviewed as a whole

and few isolated instances over a period of some years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of the respondent, the petitioner finds it extremely difficult to live with the other party any longer and if required to do so, it will amount to mental cruelty. There is a catena of authorities on this subject and the Supreme Court has laid down certain illustrative instances in SAMAR GHOSH v. JAYA GHOSH (2007) 4 SCC 511) which may be relevant while dealing with the cases of mental cruelty. As has been observed by the Supreme Court, each case will depend on its own facts and circumstances and the totality of the relationship should be taken into consideration but no inference can be drawn based on isolated instances or some incidents which may result in hardship to the petitioner.

12. In the instant case, the petitioner has come to the Court seeking the relief of dissolution of marriage on the ground of mental cruelty. The oral evidence placed on record consists of his testimony given as PW.1 and that of one of his relatives, examined as PW.2. The evidence of PW.2 is not helpful to the petitioner for the reason that he admits that he has no knowledge whatsoever about the family life of the petitioner and the respondent. According to PW.2, he was shocked to know that the petitioner has been sent to judicial custody for non-payment of maintenance amount awarded by the Court in favour of the respondent. Excepting for this, PW.2 do not say anything in support of the claim of the petitioner.

13. The evidence of PW.1 is quite inconsistent with what is pleaded by him in the petition. Briefly stated, the grounds on which dissolution of marriage is sought are:-

- (i) The respondent was neglecting him and his ailing mother and was demanding the petitioner to purchase Ac.0.18 cents of coconut garden at the cost of Rs.2.50 lakhs in her parental village. When he refused to do so, the respondent started neglecting him and his family members;
- (ii) The petitioner came to know through reliable sources that his wife used to move closely with her male friends and she used to frequently visit her parents. The petitioner was not allowed by the respondent to meet his own family members;
- (iii) The respondent used to serve half-cooked vegetables and burnt rice of bottom of the bowl to the petitioner, and that too at late hours. When she was serving tea to the petitioner, the respondent used to demand its cost and also after washing his clothes, she used to demand the washing charges;
- (iv) The petitioner came to know that the respondent is moving closely with one Bujji and used to frequently speak to him over telephone;
- (v) The respondent and her parents did not care the petitioner and his family members when they went for negotiations in November, 2006;
- (vi) The respondent lodged false complaints with the police which resulted in issuance of F.I.Rs., against the petitioner and his family members. Due to the attitude and behaviour of the respondent, the petitioner had to resign his job;
- (vii) The respondent used to abuse him in filthy language saying “*NEEKU MAGATANAM LEDU, CHEVITI VEDHAVA*” etc.;

- (viii) The respondent was accusing the petitioner for having embezzled certain amounts from his employer; and
- (ix) On 16.01.2007, the respondent abused and slapped and driven him out of the house.

The above allegations made by the petitioner have been specifically and pointedly refuted and denied by the respondent and she has come out with the explanation that all the allegations are invented and created by the petitioner and as a matter of fact, it is he who has been treating her cruelly by accusing her of leading unchaste life.

14. From the evidence of PW.1, what could be culled out is that he has grievance against the respondent since she used to dislike him and his relatives and used to refer him as *CHEVITI VEDHAVA*. He further deposed that the respondent has filed false complaint against him which resulted in filing a case under Section 498-A of IPC., which is pending as C.C.No.672 of 2007 on the file of the II-Addl.Metroplitan Magistrate, Cybedarabad, L.B.Nagar. Even though he made references to several trivial instances in his petition, he did not speak about the same in his evidence. Except for the self-serving statement of the petitioner, neither any oral nor documentary evidence is produced by him to show that the respondent has been treating him with cruelty. Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A of IPC., they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty. Even the documents that are produced by the petitioner do not show any grounds for holding that the respondent has been subjecting the petitioner with cruelty. The petitioner has been sent to jail for non-payment of maintenance. If the totality of the facts and circumstances are taken into consideration, it is evident that it is the

petitioner who has been ill-treating the respondent and neglecting to maintain her and the contention of the respondent is that the petitioner is jealous of the fact that she is gainfully employed and working as lecturer in Sanskrit in a college at Hyderabad. The petitioner has made unsubstantiated allegations against the respondent that she is not leading a moral life and moving around with her male friends more particularly with one Bujji.

15. In view of the foregoing discussion, we have no hesitation to hold that the petitioner has failed to prove any of the grounds on which he seeks dissolution of the marriage. The Court below has properly appreciated the evidence on record and dismissed the O.P. Upon re-appraisal of the evidence on record, we see no reason to interfere with the view taken by learned trial Judge. There are no merits in the appeal and the same is liable to be dismissed.

16. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

As a sequel to dismissal of the Civil Miscellaneous Appeal, CMA MP Nos.416, 1331, 1377, 1378, 1571 & 1979 of 2015, and 735, 1172 & 1761 of 2016, shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 05.01.2017
Dsr/smr