

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE P. KESHA RAO**

CIVIL MISCELLANEOUS APPEAL No.2368 of 2003

JUDGMENT: (per Hon'ble Sri Justice P. Keshava Rao)

The present miscellaneous appeal arises out of an order, dated 30.01.2003, in HMOP.No.84 of 1997 on the file of the Court of Principal Senior Civil Judge at Eluru.

The appellant in the present appeal is the petitioner in the above said O.P. filed under Section 13(1a) and (1b) of the Hindu Marriage Act, 1955 (for short, "the Act") for dissolution of the marriage.

The facts of the case are that the appellant, who is the petitioner, pleaded that his marriage with the respondent was performed on 20.10.1983 according to the rites and customs prevalent in their community since time immemorial. Their marriage was consummated and out of wedlock they were blessed with two sons, namely, Vijayadeep and Jayalakshman aged about 17 and 14 years respectively. The respondent left the matrimonial house in May, 1996. One month after the marriage, the respondent started harassing the petitioner on one pretext or the other and subjected him to untold hardship. It is also the case of the petitioner that ever since the date of marriage, the respondent was insisting the appellant to shift the place of residence from Vijayawada to

Eluru, since her parents are residing at Vijayawada. However, as the appellant refused to shift his residence, the respondent developed antagonistic attitude towards him and intensified the harassment and subjected him to psychological torture. She used to ill-treat and insult him very often even before the strangers and never cared him with love and affection. The respondent also used to leave the matrimonial house without the consent and knowledge of the appellant. Finally, in the month of May, 1996, the respondent left the matrimonial house without any cause and staying with her parents. Even though the appellant made his best efforts to bring her back, the same are in vain. The respondent instigated her brothers and father and he was assaulted on 04.06.1997 at Eluru. Therefore, he was constrained to file a petition for dissolution of marriage as stated supra.

Per contra, the respondent herein filed a counter denying the petition averments and contended *inter alia* that the petitioner is having all sorts of vices i.e., playing cards, womanizing and leading wayward life. In reality, he ignored the welfare of the respondent as well as the children. He contracted several debts from various creditors and he proposed to sell away the property and also went to the extent of beating the respondent several times indiscriminately resulting the respondent's parents reprimanded the appellant and taken away the respondent to Vijayawada. Even during

the respondent stay at Eluru, the appellant insisted the respondent to bring more money from her parents. The respondent specifically stated in the counter that with great difficulty and with the help of her paternal aunt she was able to meet the expenses for the education of her children. In the month of May, 1997, the appellant insisted the respondent to pay some more dowry through mediators in order to lead conjugal life for which the respondent has not obliged the same. In those circumstances, the respondent apprehended danger to her life. That apart it is also elicited in the pleadings of the parties that since the appellant was contracted several debts from various creditors and he was proposing to sell away the property. The respondent and her minor children were forced to file a suit in O.S.No.116 of 1996 for partition of the properties and for maintenance against the petitioner on the file of the Court of Additional Senior Civil Judge, Eluru. After contest, the said suit was partly decreed and a preliminary decree was passed for partition of the properties by setting aside the alienation made by the petitioner and also granting maintenance @ Rs.600/- per month to the respondent. In these circumstances, the respondent sought dismissal of the petition.

During the course of enquiry, on behalf of the appellant, he himself was examined as PW.1 and examined one of his family friends and his sister as PWs.2 and 3. He marked Exs.A1 to A3 on his behalf. The respondent herself was

examined as RW.1. She has examined one of the family friends of the petitioner and her younger brother as RWs.2 and 3. No documents are marked on her behalf.

On appreciation of oral as well as documentary evidence, the lower Court dismissed HMOP.No.84 of 1997 by orders, dated 30.01.1997. Aggrieved by the said order, the appellant, who is the petitioner before the Court below, filed the present appeal.

The pleadings brought on record by both the parties as well as the evidence on record as discussed by the lower Court would clearly show that there are serious differences between the appellant and the respondent more particularly with regard to the conduct and behaviour of the appellant vis-à-vis the respondent's attitude on the appellant. The Court below on appreciating the evidence of PW.2 and RW.2, observed that their evidence does not disclose that they are having impressive acquaintance with the matrimonial affairs of the parties. The Court below further observed that the evidence of PWs.2 and 3 as well as RWs.2 and 3 appears to be run against each other and it is not safe to rely upon them for effective adjudication of the matrimonial disputes between the parties. In those circumstances, relying on the evidence of PW.1 and RW.1 the Court below, particularly on the evidence of PW.1, was pleased to observe that the case set up by the appellant is not inspiring confidence and the allegations made

by the respondent and the course of events that led the appellant to sell away his properties and shift his residence from Eluru to Hyderabad would strengthen the case of the respondent. In those circumstances, the Court below found that the appellant failed to establish that he was subjected to cruelty by the respondent and she herself deserted to put an end to the matrimonial relationship permanently.

Heard the counsel for both the parties and perused the record.

The counsel for the appellant submitted that the respondent left the matrimonial house in May, 1996, without any reasonable cause and, in fact, she instigated her brothers and father to assault the appellant on 04.06.1997 at Eluru. She used to leave the matrimonial house without the consent and knowledge of the appellant very often and she also went to the extent of filing a civil suit for partition against the appellant. When the appellant refused to shift his residence from Vijayawada to Eluru, the respondent developed an antagonistic attitude and subjected him to psychological torture and etc. He also contended that since the parties are residing separately from May, 1996 onwards, it can be safely presumed that the marriage between the appellant and the respondent is irretrievably broken down and there is no chance of reconciliation in the light of the fact that for the last two decades they are living their lives separately.

The evidence on record as well as the discussion made by the lower Court would clearly establish that the respondent never deserted the appellant voluntarily without any reasonable cause. In fact, though the appellant has pleaded cruelty and desertion, the pleadings made in the petition in that direction as well as the evidence let in are general and vague in nature. No specific allegations are made, but for not obliging to shift the residence from Vijayawada to Eluru and used to leave the matrimonial house very often.

Per contra, the steps taken by the respondent in filing a suit for partition when the appellant was proposing to sell the properties to meet the debts incurred by him from various creditors as well as shifting of his residence to Hyderabad after selling the properties would clinchingly evidence that there is force in the contention of the respondent and the Court below rightly dismissed the petition.

To support his contention, the counsel for the appellant relied on the judgment of a Division Bench of this Court in **Kalapatapu Lakshmi Bharati v. Kalapatapu Sai Kumar**¹ and the judgment of Rajasthan High Court in **Rakesh Sharma v. Surbhi Sharma**², and emphasized that since the parties are leaving apart for the last more than 20 years, it is a fit case where divorce can be granted, as there is no chance

¹ 2017 (1) ALT 131 (D.B.)

² AIR 2002 Rajasthan 138

of the parties living together and the marriage between them is irretrievably broken down.

In **Samar Ghosh v. Jaya Ghosh**³, 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 endeavor to reconcile the parties; yet, if it is found that the breakdown is irretrievable, then divorce should not be withheld. It is 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 Apex Court referred to and relied upon its earlier judgment in **Kohli v. Neelu Kohli**⁴, 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.

³ 2007 (3) ALT 62 (SC)

⁴ 2006 (4) SCC 558

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.

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.”

One of the instances indicated by the Supreme Court in **Samar Ghosh (3 supra)**, which may be relevant in dealing with the case of mental cruelty is as under:

“Where there has been a long period of continuous separation, it may fairly be concluded 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. In such like situations, it may lead to mental cruelty.”

In the light of the undisputed fact that the parties have been living separately for about 21 years, there may be no escape from the conclusion that the marriage has irretrievably broken down. As held by the Supreme Court, a long time separation itself would lead to mental cruelty. Therefore, irrespective of the findings of the lower Court on

the failure of the appellant to prove mental cruelty, he is entitled to a decree for dissolution of marriage on the sole reason that there is no possibility for reunion of the parties in order to live together. Since the marriage between the parties has irretrievably broken down, any attempt to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties for the rest of their lives.

In the afore-mentioned facts and circumstances of the case, the appeal is accordingly allowed setting aside the orders passed in HMOP.No.84 of 1997 on the file of the Court of Principal Senior Civil Judge at Eluru and thereby the marriage between the appellant and the respondent performed on 20.10.1983 is dissolved. No costs.

Miscellaneous petitions, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

Date:22.11.2017.

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