

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

F.C.A.No.100 of 2005

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

Heard the learned counsel for the appellant and in spite of service of notices on the respondent, there is no representation on her behalf.

The appellant who is the petitioner in the Court below filed the present appeal aggrieved by the orders passed in O.P.No.6 of 2003, dated 09.06.2005 on the file of the Court of the Family Judge, at Hyderabad, dismissing the petition holding that the petitioner is not entitled to the relief of dissolution of his marriage with the respondent which was solemnized on 16.04.1992 at Nalgonda town, according to the Hindu Rites and Customs.

The facts of the case are that originally the appellant herein filed a petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act seeking dissolution of marriage with respondent solemnized on 16.04.1992, on the file of the Court of the Family Judge, at Hyderabad. It is his specific case in the petition that his marriage with respondent was solemnized on 16.04.1992 in Zilla Parishad Office premises at Nalgonda town according to the Hindu Rites and Customs. After the marriage, the appellant as well as the respondent lived together with his parents at Nalgonda till the end of 1993. At the time of marriage, the appellant's father was Z.P. Chairman and later he was elected as Chairman of Mother Dairy of

Ranga Reddy District. The appellant's father purchased a Flat No.104 at Loukya Apartments at Asmanghad, Hyderabad with his own earnings. But, the same was registered in the name of the appellant. The appellant as well as the respondent shifted their family into the above said flat in the year 1994. After, they shifting the family to Hyderabad, the behaviour of the respondent totally changed and she was very harsh towards the appellant as well as his parents. Her attitude became very adamant and cruel causing intolerable and mental torture to the appellant and his parents. The respondent also wanted to live separately from the parents of the appellant. It was accepted and they were made to reside in a portion in the poultry complex belonging to the appellant's sister situated at Peddamberpet village, Hayathnagar. They were blessed with a female child by name Aarthi on 15.05.1994. The parents of the appellant were providing everything for their needs since both of them were not having any jobs. Thereafter, the respondent again insisted for shifting the residence to Ramnagar, Hyderabad in a rented house. Accordingly, they have shifted the residence to Ramangar and the appellant was working in a private concern. After 7 or 8 months, the respondent once again insisted to shift the residence to Koti. In fact, it is specifically stated by the appellant that the respondent was totally under the control of her parents and brother and she was acting to the tunes of her parents. Five months after they shifted to Koti, the respondent once again demanded to shift the residence to Malakpet. At that time, the parents of the respondent were also

planning to shift their residence to Hyderabad from Suryapet. On account of these frequent changes in the houses, the appellant was forced to lose his job. In a way, he stated that he has adjusted with the respondent and her parents with the hope that the respondent would mend her ways, but all were in vain. The respondent also pressurized the appellant demanding partition of his family properties from his father. Even for that, they have accepted and gave Rs.3 lakhs to the appellant and the same was deposited in Andhra Bank, Dilsukhnagar branch and they gave the flat in Loukya Apartments to the appellant. Thereafter, the respondent made a proposal to the appellant to go to Canada, though they were not qualified to seek a job in Canada. She always used to ill-treat the appellant with the assistance of her parents and brother. In fact, the appellant was necked out of the house and for about 7 months he spent the time outside. When the appellant fell sick, his parents requested the respondent to bring back the appellant, but she refused to do so. It is also said that the respondent would not bother even if the appellant dies and she was not willing either to join him or allow him to come to her. In those circumstances, the appellant was taken to his parents' house. The parents of the appellant wanted to settle the issue but the respondent never allowed them to enter into the house. Therefore, the appellant was constrained to issue legal notice calling upon the respondent to join his conjugal society. The respondent refused to receive the same. As such, the respondent willfully deserted the matrimonial company of the

appellant without any reasonable cause and the appellant was subjected to humiliation, harassment as well as physical and mental cruelty. In those circumstances, the petition was filed by the appellant seeking decree of divorce.

The respondent in reply to the petition, filed a counter denying the averments made in the petition and contended *inter alia* that after the marriage, the parents of the appellant never shown any affection towards her and they treated her as a servant and labour. The real trouble started at marriage pandal itself when the appellant's parents demanded more amounts towards 'Adapaduchu lanchanam'. Her parents gave Rs.6 lakhs towards dowry, Rs.50,000/- as 'Adapaduchu lanchanam' and even then, the parents of the appellant not satisfied with the same, insisted her for additional amounts. After the marriage, the respondent and her parents came to know that the health of the appellant is not good and is having a psychological disorder and he is under continuous medication and he could not do any work. Most of the time, the appellant was under the influence of drugs or by consuming alcohol. The respondent also stated that the flat at Dilsukhnagar was purchased with the money given by her father, but, it was registered in the name of the appellant. The appellant was not having any income of his own and taking advantage of his innocence, his parents ill-treated the respondent in a cruel manner harassing her mentally and physically. The mother of the appellant always encouraged him to beat the respondent and she was demanding to get more money from her parents, and

threatened that the respondent will be thrown out of the house along with the appellant. Thereafter, the appellant's mother necked out the respondent and appellant from the house. She specifically stated that she never demanded for separate residence. When they were necked out of the house and as there was no alternative, they started living in the poultry shed. The reason for shifting to different premises in Hyderabad is due to the exigencies of nearer to a work place since she secured a job at Musheerabad and also to be close to the school at Himayathnagar where their daughter was studying. In fact, as there was no one to look after the child and the respondent was forced to join her in a Child Care Centre. While they were staying at Koti, the respondent lost her job and she and her daughter were again dependent and maintained by her parents. The respondent tried her level best to change the attitude of the appellant but in vain. In fact, in the month of November, 2002 the appellant came to their house along with some strangers who threatened the respondent and her parents to give divorce to the appellant and also demanded to sign on some papers. However, the respondent and her parents refused to do so and even on the date of filing of her counter, she was ready to lead happy marital life with the appellant if all the facilities are provided to them. In those circumstances, the respondent sought to dismiss the petition.

Basing on the above said pleadings, the Court below has framed the following points:

- i) *Whether the respondent by her conduct subjected the petitioner to mental harassment amounting to cruelty?*
- ii) *Whether the petitioner is lazy and never interested in doing any job and whether petitioner is having psychological disorders which was suppressed at the time of marriage?*
- iii) *Whether the petitioner is entitled to the relief of dissolution of his marriage with respondent?*
- iv) *To what relief?*

To substantiate his contentions, the appellant examined himself as PW-1 besides examining cousin of PW-1's father as PW-2. The appellant marked Exs.P-1 to P-5 on his behalf. On the other hand, the respondent examined herself as RW-1 and Exs.R-1 to R-4 are marked. She also examined Dr.Chandrasekhar who treated PW-1 as RW-2. The Court below after appreciating the pleadings, and evidence on record and relying on the material placed before it, dismissed the petition by order, dated 09.06.2005 holding that the appellant is not entitled to the relief of dissolution of his marriage with respondent. After holding that the petitioner failed to establish the cruelty as well as the desertion on the part of the respondent, the court below observed as under:

“On perusal of the entire oral and documentary evidence placed before me, I am of the considered opinion that PW-1 is not in the habit of doing any work and is having psychological problems also and for the state of affairs that existed between PW-1 and RW-1 is not at fault and PW-1 has failed to prove any of the allegations made against RW-1. On the other hand, the evidence clearly shows on account of his lazy attitude and psychological problem PW-1 was not doing any work and he subjected RW-1 to mental harassment on account of his attitude she was

forced to seek a job to maintain herself and she was forced to pursue her studies for better living. Having come to the court it is for PW-1 to establish his case. He failed to establish his case and on the other hand it is established that he is responsible for the present state of affairs between PW-1 and RW-1. PW-1 did not come to court with clean hands and he is not entitled to the relief of dissolution of his marriage he was asking for. Points 1 and 2 are answered accordingly.”

Aggrieved by the same, the present appeal is filed.

The learned counsel for the appellant while making submissions emphasized on the aspect that the respondent has willfully deserted the matrimonial company of the appellant against his wish and consent two years preceeding to the filing of the petition without any justifiable cause. In fact, all the sincere efforts made by the appellant including issuance of legal notice which was refused by the respondent, she did not co-operate and join his conjugal society, thereby, the appellant is entitled for divorce on the ground of desertion. He also would contend that in the light of the evidence of RW-2 and on the strength of the statement elicited in the cross-examination that the respondent voluntarily deserted PW-1, but not due to the harassment, as alleged in her evidence and counter and since the parties are living separately for the last 1½ decade, it is a fit case where the marriage between the parties can be dissolved by a decree of divorce. He also would contend that by virtue of long separation between them, there are no chances of conciliation and it can be safely inferred that the marriage has been irretrievably broken down. To support his contention that since the parties are living

separately for more than 1½ decade he relied on a decision reported in KALAPATAPU LAKSHMI BHRATI v. KALAPATAPU SAI KUMAR¹ of this Court and contended that long separation would itself would lead to mental cruelty and further there is no possibility of reunion of the parties in order to live together. Therefore, further continuation of the proceedings would only prolong the mental agony of the parties for rest of their lives and as such, the appellant is entitled for a decree of divorce against the respondent by dissolving the marriage between them.

A perusal of the pleadings as well as the material on record, would clearly show that there are serious disputes between the appellant as well as the respondent on various issues resulting incompatibility between them, more so, the allegation as well as the counter allegation between the appellant and the respondent that the appellant was necked out of the house and on the other hand, the respondent has been necked out of the house. Apart from other aspects, the other important aspect relating to the mental status of the appellant and his conduct and behavior in not coming to the matrimonial house for seven long months roaming on foot paths and here and there itself would throw a strong suspicion on continuation of the matrimonial relation between the appellant as well as the respondent. The legal notice, dated 23.11.2002 marked as Ex.P-3 issued on behalf of the appellant asking the respondent to join his conjugal society and refusal of the same by the respondent vide Ex.P-5 would clinchingly establish that the

¹ 2017(1) ALD 272 (DB)

respondent is not interested to lead conjugal life with the appellant. That apart, in the cross-examination, RW-1 has clearly stated that “*I have voluntarily deserted PW-1 but not due to the harassment as I alleged in my evidence and counter.*” This aspect also establishes the intention of the respondent that she is not willing to continue the matrimonial relationship with the appellant. Coupled with this, since the appellant as well as the respondent are living separately for the last more than 1½ decade would suggest that the marriage between the parties has broken down beyond repair and it would be unrealistic for the law not to take the notice of the fact that it would be injurious in the interest of parties to continue the relationship. On this aspect, the Apex Court in *KOHLI v. NEELU KOHLI*² 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.

² (2006) 4 SCC 558

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.”

The Apex Court, in **SAMAR GHOSH v. JAYA GHOSH**³ held 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.”

Therefore, coming to the facts and circumstances of the present case, undisputedly the parties have been living separately for the last more than 1½ decade and there is no dispute to conclude that the marriage between the appellant and the respondent has irretrievably broken down. In these circumstances, as held by the Apex Court a long time separation itself would lead to mental cruelty. Therefore, irrespective of the findings as recorded by the court below on the aspect of that the appellant

³ 2007(4) ALD 11 (SC)

failed to prove mental cruelty as well as the desertion are liable to be set aside and the appellant is entitled to a decree of dissolution of marriage not only on the ground of desertion by virtue of long separation, but also on the ground of cruelty if at this length of time if the parties are directed to continue the matrimonial relationship. As such, the marriage between the parties has been irretrievably broken down and any attempt to patch up the differences between the parties, and any attempt to force them to live would tantamount to cause mental cruelty and would prolong mental agony of the parties for the rest of their lives.

In the aforesaid facts and circumstances of the case, the appeal is allowed setting aside the order and decree in O.P.No.6 of 2003, dated 09.06.2005 on the file of the Court of the Family Judge, at Hyderabad and consequently the marriage between the appellant and the respondent is dissolved by a decree of divorce. No costs.

As a sequel to disposal of the appeal, the interim orders, if any, in the appeal shall stand vacated.

C. PRAVEEN KUMAR, J

P. KESHAVA RAO, J

Date: 22.11.2017.
CCM

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



F.C.A.No. 100 of 2005

(Judgment of the Bench delivered by
Hon'ble Sri Justice P. Keshava Rao)

Date:22.11.2017

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