

HON'BLE SRI JUSTICE SANJAY KUMAR

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.206 OF 2006

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

1. This appeal arises from the order dated 17.10.2005 passed in H.M.O.P. No.296 of 2003 by the I Additional Senior Civil Judge, Guntur District (For short, 'the trial Court).

2. Heard the arguments of Sri N.Subba Rao, learned counsel for the appellant. In spite of service of notice, none entered appearance on behalf of the respondent till date.

3. The case of the appellant, in brief, is as follows: appellant herein is the husband and the respondent herein is the wife and their marriage was solemnized on 15.11.1997, as per Hindu rites and customs. Immediately after the marriage, respondent joined his company at Narasaraopet to lead conjugal life. Since the inception of marriage, the respondent alleged to have harassed the appellant with her adamant behaviour, openly proclaiming that she had no love and affection towards him, due to pressure from her parents, she married the appellant and even demanded him to send her in-laws away the house and set-up a separate family, other wise she would not lead the conjugal life with him and deserted the appellant in the month of May, 1998 and went away to her parental home situated at Varagani village. In spite of best efforts of the appellant, the respondent could not join his society and all his mediations proved futile. The appellant got issued a legal notice to the respondent dated 18.09.2000. Instead of joining the society of the appellant, the respondent

got issued a reply dated 26.09.2000 with all false allegations reiterating her demand for separate living with him from her in-laws, hence, the petition.

4. Respondent filed counter admitting her marriage with the appellant and presentation of Rs.50,000/- towards *pasupu kumkuma*, gold chain worth Rs.15,000/- and other household articles at the time of marriage, subsequently, on demand, her father, giving an additional amount of Rs.25,000/- to the appellant. She further contended that the appellant had earlier instituted H.M.O.P. No.227 of 2000 on the file of Principal Senior Civil Judge, Narasaraopet and withdrew the same and thereafter getting vexed with the attitude of appellant, she filed M.C. No.72 of 2002 on the file of IV Additional Munsif Magistrate, Guntur and obtaining maintenance therein and sought for dismissal of the petition.

5. During course of trial, on behalf of the appellant, P.Ws.1 and 2 were examined but no documents were marked. On behalf of the respondent, R.Ws.1 and 2 were examined and Ex.B-1 letter was marked.

6. Upon hearing arguments of both the counsel and considering the oral and documentary evidence available on record, the trial Court dismissed the petition relying on Ex.B-1 letter addressed by the respondent to the appellant observing that the whole effort of addressing Ex.B-1 letter bears no animosity against the appellant but only to make him aware of the designs of her in-laws towards her and unless those apprehensions are removed from her mind, she is not safe in their company.

7. Learned counsel for the appellant would submit that the findings of the Court below are contrary to the provisions of the Hindu Marriage Act, 1955 (for short, 'the Act'). The Court below failed to appreciate the

evidence adduced on behalf of the appellant and grant decree of divorce in favour of the appellant, under Section 13(1)(ia) and (ib) of the Act. There is ample evidence on record to believe that the respondent deserted the appellant and living separately for more than two years before the presentation of divorce petition. There is no possibility of appellant and respondent living together. The Court below ought not have placed reliance on Ex.B-1 and ultimately prayed to set-aside the impugned order and dissolve the marriage between the appellant and the respondent.

8. Even after service of notice, the respondent did not choose to appear before this Court or engaged a counsel.

9. In view of the facts and circumstances, the **point** for consideration is whether the appellant is entitled for a decree of divorce and the impugned order is liable to be set-aside?

10. **POINT**: The marriage between the appellant and the respondent was performed on 15.11.1997 at Mallikharjuna Bramaramba Temple, Pedakakani according to Hindu customs and rites. Immediately the respondent joined the company of the appellant at his house, situated at Narasaraopet, Guntur district. The allegation is that, from the beginning, the respondent did not co-operate with the appellant in all aspects and caused mental harassment. The respondent had openly proclaimed that she had no love for the appellant, she married him on the pressure of her parents and against her will. The respondent deserted him in May, 1998 and started living with her parents at Varagani village. In spite of the efforts made by the appellant as well as mediators, respondent refused to join the company of the appellant.

11. On the other hand, the respondent filed a counter in the lower Court and denied the same and also stated that lot of dowry was given to the appellant during the marriage by her parents. Having vexed with the attitude of the appellant, she filed Maintenance Case No.72 of 2002 on the file of the IV Additional Munsif Magistrate, Guntur. The appellant himself resorted to all ill-treatment.

12. To substantiate the contentions, the appellant examined himself as P.W.1 and also examined P.W.2 but no document was marked on his behalf. The respondent examined herself as R.W.1 and also examined her father as R.W.2 and got marked Ex.B-1 letter on her behalf. P.W.1/appellant supported the averments of divorce petition. The specific evidence of P.W.2 is that he is a mediator and when H.M.O.P. No.227 of 200 was filed, he conducted mediation in this case. The appellant has withdrawn the said O.P. on the condition of respondent joining his company and the respondent failed to do so. R.W.1 (respondent) in her evidence stated that she was necked out from the house of the appellant in the first week of June, 1998 she rejoined him in December, 1998 and stayed with him for a period of ten days. Again in February, 1999 she stayed with the appellant for four days. R.W.1 also admitted that she received legal notice dated 16.09.1999 (*sic*) from the appellant in which she was called to join the marital life with the appellant. For that, she gave reply stating that she has no security in the hands of the family members of the appellant. She expressed her unwillingness to join the appellant. R.W.2, father of the respondent, stated that the appellant necked out his daughter from his house in June, 1998. The respondent was necked out by the appellant and there is danger to the life of the respondent in the hands of the appellant, there is no immediate possibility for the respondent to join her husband. It is evident from the record that from 1998 the

appellant and the respondent have been living separately but in 1998 and 1999 they have lived together for a very short period *i.e.*, ten days and four days respectively. Thereafter, there is no evidence of appellant and respondent living together. There is also a specific evidence of R.W.1 (respondent) who expressed her unwillingness to join the company of the appellant as she feared about her security. R.W.2, father of the respondent, also stated that there is danger to the life of the respondent in the hands of the appellant. There is also record to show that H.M.O.P. No.227 of 200 was withdrawn by the appellant on a condition that the respondent would join his company, due to intervention of the mediators. P.W.2 has categorically stated to that effect. There is no reason for P.W.2 to depose false. The trial Court had placed reliance on Ex.B-1 letter under which the respondent tried to make aware the appellant of his duties and remove the misconceptions and understanding between the parties to the litigation and that the parties require more healing time to lead matrimonial life, declined to grant divorce as prayed for.

13. It is evident from the entire record that the respondent has been unwilling to join the company of the appellant, she deserted on her own and she did not kept up her promise made before the withdrawal of H.M.O.P. No.227 of 2000. The respondent deserted the appellant for more than two years before filing the divorce petition. There is deliberate permanent abandonment by the respondent without a reasonable and just cause in joining the company of the appellant. There is also absolute repudiation of the obligations of the marriage on the part of the respondent. There is breakdown of the marriage between the parties and there is no possibility of any reconciliation. In view of these circumstances, the appellant is entitled for a decree of dissolution of marriage between him and the respondent as prayed. The point is accordingly answered.

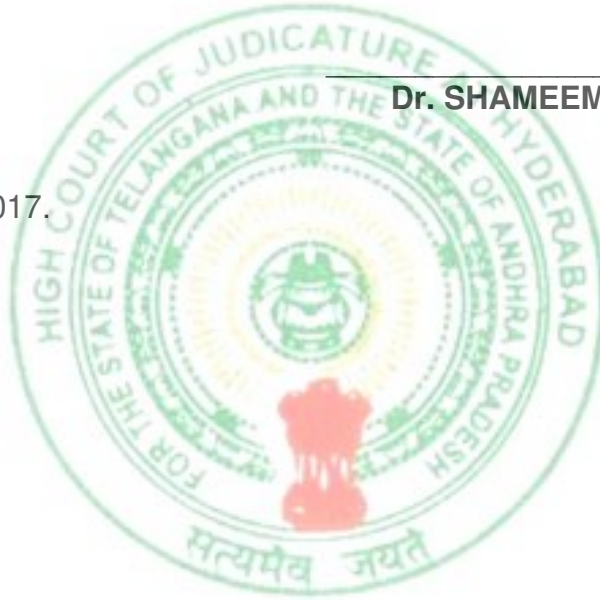
14. In the result, the Civil Miscellaneous Appeal is allowed granting decree of divorce by dissolving the marriage between the appellant and the respondent as prayed. The impugned order dated 17.10.2005 passed in H.M.O.P. No.296 of 2003 by the learned I Additional Senior Civil Judge, Guntur is, accordingly, set-aside.

15. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 29-08-2017.
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AND

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(Judgment of the Division Bench delivered by
Hon'ble Dr. Justice Shameem Akther)

Date. 29-08-2017

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