

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No.1272 OF 2005 AND 902 OF 2006

DATED: 06-01-2017

CIVIL MISCELLANEOUS APPEAL No.1272 OF 2005

Indugula Bhavanarayana, S/o.Subbarao,
Bank Employee, 42 years, Buravari Street,
Door No.30-2-11/7, Kakinada. --- Appellant.

And

Indugula Venkataramana @ Rama,
W/o. Bhavannarayana, 33 years,
Georgepeta, Tallarevu Mandal,
East Godavari District. --- Respondent.

CIVIL MISCELLANEOUS APPEAL No.902 OF 2006

Indugula Bhavanarayana, S/o.Subbarao,
Bank Employee, 42 years, Buravari Street,
Door No.30-2-11/7, Kakinada. --- Appellant.

And

Indugula Venkataramana @ Rama,
W/o. Bhavannarayana, 33 years,
Georgepeta, Tallarevu Mandal,
East Godavari District. --- Respondent.

Counsel for the appellant : Mr. C.V. Rudra Prasad
Mr. E.V.V.S. Ravi Kumar

Counsel for the respondent : --

This Court made the following:

COMMON JUDGMENT: (Per Hon'ble Sri Justice G. Shyam Prasad)

1. This common judgment is being passed in these Civil Miscellaneous Appeals arising out of two Original Petitions filed before the Courts below. C.M.A.No.902 of 2006 arises out of order dated 8-7-2002 in O.P.No.86 of 1995 on the file of the Principal Senior civil Judge, Kakinada, dismissing the said O.P. filed under Section 13(1)(ib) of the Hindu Marriage Act, 1955 (for short, 'the Act') by the husband for dissolution of marriage. C.M.A.No.1272 of 2005 arises out of order dated 11-8-2005 in O.P.No.170 of 2003 on the file of the I Additional Senior civil Judge, Kakinada, allowing the said O.P. filed by the wife under Section 9 of the Act for restitution of conjugal rights.

2. At the hearing, there is no representation for the respondent/wife. We have heard the arguments of learned counsel for the appellant/husband.

3. In the manner in which we are proposing to dispose of these Civil Miscellaneous Appeals, the necessity of recording of detailed facts is obviated. Suffice it to note that the marriage between the appellant and respondent was performed, as per Hindu rites and customs, on 27.02.1985; that the couple were blessed with two children – a boy and a girl; and that since the year 1993 onwards differences arose between the couple and they have been living separately. The O.P. filed by the appellant/husband for divorce in the year 1995 was dismissed by the Court below in 2002 on the ground that he failed to prove that the respondent/wife had deserted him without any reasonable cause. Thereafter, the O.P. filed by the respondent/wife in the year 2003 for restitution of conjugal rights, was allowed by the Court below in 2005 and the appellant-husband was directed to take back the respondent/wife to live with him. Being aggrieved by both

these orders, the appellant/husband preferred these Civil Miscellaneous Appeals.

4. The point that arises for consideration in these matters is:

Whether the orders, dated 11.08.2005, in O.P. No.170 of 2003, and dated 8-7-2002 in O.P.No.86 of 1995 are sustainable in accordance with law?

5. On consideration of the evidence in O.P. No.170 of 2003, filed by the respondent-wife, the Court below has observed in Para 8 as under:

“.....RW.1 admits in his cross-examination that he is not paying any amount to the petitioner even after disposal of the O.P.86/95, that it is proper to the petitioner to go to her husband's house even if the respondent is having illicit intimacy with several ladies. In view of the above discussion, that it is proper to allow this petition and to send her back to the house of the respondent.”

6. The trial Court appears to have passed the order of restitution of conjugal rights basing on the fact that even after the disposal of O.P. No.86 of 1995 filed by the appellant/husband, he did not pay any maintenance to the respondent/wife. The restitution of conjugal rights on this ground is not at all justifiable. The respondent/wife has not filed any petition for grant of maintenance under Section 125 Cr.P.C., after disposal of O.P. No.86 of 1995. If there is any order by the Court, the appellant/husband would have paid maintenance to her. Merely because the appellant did not pay maintenance, on that ground restitution of conjugal rights cannot be granted. There are wild allegations made by the respondent/wife against the appellant/husband in the petition filed for restitution of conjugal rights. On one hand, she alleged that the appellant was addicted to all bad habits like drinking, playing cards, having illicit intimacy with other women and beating her and abusing her without any

reason and that he had eloped with one lady by name Santhi. The respondent/wife also alleged that the appellant/husband ill-treated her by locking the house from outside.

7. The appellant in his evidence as RW.1 in O.P.No.170 of 2003 stated that the respondent gave a complaint to Police and the Police used to visit the Bank where he was working, and harassed him in many ways, that he was humiliated by the respondent with her behaviour and due to the frequent visits of the Police and that he also attended the Police Station number of times.

8. In spite of the serious allegations made by the wife against the husband and *vice-versa*, the trial Court has ordered restitution of conjugal rights. There are no plausible grounds for allowing the petition for restitution of conjugal rights by the trial Court. Therefore, the petition granting restitution of conjugal rights is liable to be set-aside. It is also pertinent to note that even after allowing of the said petition, the respondent-wife has not taken any steps legally for joining the association of her husband. This clearly shows that she has no intention to live with her husband.

9. The trial Court had dismissed the O.P. No.86 of 1995 on the ground that there is no evidence to prove that the respondent-wife deserted him without any reasonable cause. The trial Court observed that nothing was placed before it to show that the respondent-wife herself withdrew from the society of the appellant-husband and refused to join him. In the light of the subsequent events that have taken place after passing of the decree for restitution of conjugal rights, there is no plausible explanation coming from the respondent-wife for not taking any legal steps for joining the association of her husband. If really, the respondent-wife was interested to join the association of the appellant, she would have filed a petition for execution of the decree of

restitution of conjugal rights. In this case there is no such instance brought to the notice of this Court.

10. The main submission of learned counsel for the appellant-husband is that there is ample evidence on record to show that the respondent-wife wilfully deserted him without any reasonable cause, but the trial Court, without considering the evidence on record in proper perspective, dismissed the petition filed for divorce. He has further submitted that the trial Court also failed to consider the grounds of desertion pleaded by the appellant-husband while dismissing the petition.

11. It is his further submission that the respondent-wife, even after obtaining the decree for restitution of conjugal rights in the year 2005, did not make any effort to live with the appellant-husband and she has been residing separately for the last 23 years *i.e.*, from 1993 onwards, which is a good ground to grant decree of divorce as it amounts to irretrievable breakdown of marriage in view of the principles laid down by the Apex Court in ***Samar Ghosh Vs. Jaya Ghosh***¹, and in ***Naveen Kohli Vs. Neelu Kohli***².

12. In ***Samar Ghosh***¹, the Apex 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

¹ 2007 (3) ALT 62 (SC)

² (2006) 4 SCC 558

greater misery for the parties. The Apex Court in **Samar Ghosh**¹ referred to and relied upon its earlier judgment in **Naveen Kohli**², 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.

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.”

13. In view of the principles laid down by the Apex Court in the decisions referred supra, since the respondent-wife is living separately for the past 23 years, it must be recognised that the marriage in the instant case has irretrievably broken down and that at this distance of time, there is no possibility of reunion of the parties. Therefore, the appellant-husband is entitled for decree of divorce and, consequently, the order dated 11.08.2005, made in O.P. No.170 of 2003 is liable to be set-aside.

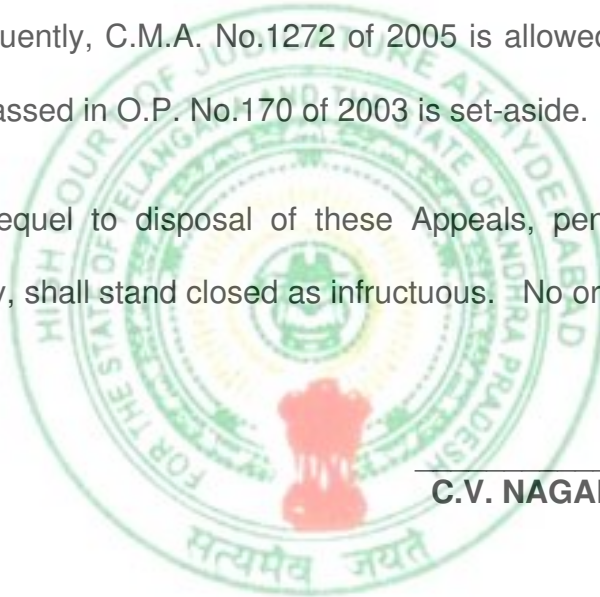
14. From the evidence available on record, it is also clear that the respondent-wife has failed to prove that she has made any serious attempt to live with the appellant-husband all these years. The respondent-wife did not approach any Court for execution of the decree of restitution of conjugal rights. Though she seems to have made a feeble attempt of mediation, she did not take any concrete steps for living with her husband. Since the marriage between the parties has broken down beyond repair, there is no possibility of reunion of the parties. Therefore, the decree of restitution of conjugal rights passed in the year 2005 is of no consequence. Both the parties let in evidence making allegations and counter allegations against each other. Civil Miscellaneous Appeal No.902 of 2006 is filed in the year 2002 and Civil Miscellaneous Appeal No.1272 of 2005 is filed in the year 2005 and even after filing these Appeals the parties did not reconcile to live together. The subsequent conduct of the parties would also clearly indicate that there is no possibility of their reunion in future.

15. On consideration of the arguments of the learned counsel for the appellant and the material available on record, we are of the considered view that to give a quietus to the long sufferance of the parties and keeping in mind the welfare of the children, it is appropriate to dissolve the marriage between the appellant and the respondent by granting decree of divorce. Hence, both the Appeals are to be allowed.

16. In the result, C.M.A.No.902 of 2006 is allowed. The order, dated 08.07.2002, passed in O.P. No.86 of 1995 is set-aside by dissolving the marriage between the appellant and the respondent by a decree of divorce.

17. Consequently, C.M.A. No.1272 of 2005 is allowed. The order, dated 11.08.2005, passed in O.P. No.170 of 2003 is set-aside.

18. As a sequel to disposal of these Appeals, pending miscellaneous petitions, if any, shall stand closed as infructuous. No order as to costs.



C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

Date: 06-01-2017.
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THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

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CIVIL MISCELLANEOUS APPEAL Nos.1272 OF 2005 & 902 OF 2006

(Common Judgment of the Division Bench delivered by
Hon'ble Sri Justice G. Shyam Prasad)

Date. 06-01-2017

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