

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE N. BALAYOGI**

FAMILY COURT APPEAL No.188 of 2017

JUDGMENT : (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant/husband has challenged order, dated 06.01.2017, passed by the Judge, Family Court, Warangal, in F.C.O.P.No.324 of 2015, whereby the petition filed by the appellant under Section 13(1)(ia) of the Hindu Marriage Act, 1956, (for short, 'the Act'), for dissolution of marriage was dismissed.

2. Brief facts of the case are that the marriage of the appellant with the respondent was solemnized on 06.07.2002. As per the allegation of the appellant, since it is a second marriage for the respondent, she was not cooperating for smooth conjugal life and she always used to leave the society of the appellant and used to reside at her parents' house. Since the respondent hails from rich family, she could not adjust with the standard of living of the appellant and she used to demand modern amenities and lavish life, which the appellant could not afford due to his financial limitations.

3. The case of the appellant herein is that during the period of March 2002 to 2015, the respondent hardly lived with him for six months intermittently and she used to show lame excuses and she was not cooperating with sexual intercourse. Further, the respondent used to avoid sexual intercourse, therefore, the appellant took her to doctors

for her not getting regular periods, but she never used the medicine as prescribed by the doctor regularly. The respondent did not evince any interest to improve her health condition. She was taken to Fertility Hospital, Mamatha Dayala Centre and I.V.F. method was used for conceiving pregnancy, but with her irregular use of medicines and without following advice of doctors, all the attempts proved futile. In addition to that, the respondent used to humiliate him as he happened to be physically handicapped without normal gait. Several panchayats were held, but in vain. The respondent did not return back to his house since January 2013. The brother of the respondent is a caste elder yields good influence in Yadava community and said community association obtained the signature of both parties in the year 2010. The respondent filed false cases against the appellant in Mahila Police Station. The respondent used to spend his hard earned money for her lavish living. The respondent mentally tortured the appellant without allowing for sexual intercourse and living at her parents' house, as such, the appellant left with no other alternative seeks dissolution of marriage.

4. The case of the respondent is that the appellant deliberately suppressed the material facts and absolutely there are no grounds for divorce and there is no cruelty committed by the respondent. Whereas, the appellant used to beat her indiscriminately creating street brawl situations and several panchayats were held in this regard. The panchayat elders warned him to change his attitude

and to maintain cordial relations with her, but there was no change in his attitude. She suffered the cruelty stoically with a hope that he would change his attitude, but there was no change. On the other hand, the appellant stepped up the harassment day-by-day due to which she even attempted to commit suicide vexed with his behaviour. The appellant beat her black and blue and in fact necked her out and having apprehended danger to her life at the hands of the appellant, she is taking shelter at her parents' house. The appellant bluntly refused to take her back, then she lodged a complaint with Women Police Station on 24.03.2013, but the said police did not initiate any action against the appellant.

5. Further, the case of the respondent is that despite getting handsome salary, the appellant neglected her, as such, she filed M.C.No.7 of 2015. The mother of the appellant was bent upon annihilating the respondent with active connivance of the appellant, but she narrowly escaped from their clutches. In fact, it is the appellant himself made her life miserable and the appellant never made any attempt to take her back at any time and totally deserted her though she prepared to maintain cordial relations with him.

6. In the cross-examination, the appellant deposed that he has not filed any document showing his version as paras 2 to 4 of the affidavit and he has not referred the names of the elders of the panchayat held in the year 2009. The appellant has not verified the antecedents of the family and property particulars before the marriage.

The appellant has not given the exact date when the respondent left his conjugal society. The appellant denied the suggestion that he filed petition to get rid of her and respondent never harassed her.

7. PWs.2 and 3 are the paternal aunts of the appellant. Both deposed as deposed by the appellant.

8. On the other hand, the respondent examined herself as RW.1, wherein she deposed that the appellant used to beat her indiscriminately creating street brawl situations. Several panchayats were held and panchayat elders warned the appellant to change his attitude and to maintain cordial relation with her. However, there was no change in his attitude and she suffered the cruelty stoically with a hope that he would change his attitude, but there was no change. On the contrary, the appellant stepped up harassment day-by-day and she even attempted to commit suicide vexed with his behaviour. The appellant beat her black and blue and in fact necked her out, having apprehended danger to her life at the hands of the appellant, she is taking shelter at her parents' house.

9. The aforesaid fact has been corroborated by RW.2, panchayat elder, who deposed that the appellant and respondent lived happily for few years and they were issueless. RW.2 noticed in the panchayat that the appellant addicted to lead lavish life as per his own whims and fancies, neglecting the respondent and also harassing her mentally and physically and he used to beat her mercilessly. Due to

the acts of the appellant, she vexed with her life and tried to commit suicide. The appellant beat her and necked her out from the house. Since then, she has been taking shelter at her parents' house. During the mediation, she along with other relatives tried to convince the appellant to change his behaviour and lead happy marital life with her, but the appellant bluntly refused and left to her fate. The respondent always expressed her willingness to join conjugal society of the appellant, but the appellant deliberately refused to take her into his conjugal fold.

10. In cross-examination, RW.2 deposed that he orally asked the appellant to take good care of her. The appellant never complained to them about her quarrelsome attitude. Only grievance of the appellant is that the respondent is failed to conceive pregnancy. She never insisted for any such site in her name, but insisted for some source of maintenance. She is particular about staying together.

11. The fact remains that the appellant sought divorce on the ground of cruelty and according to him, the respondent is suffering from irregular periods and she is unable to conceive pregnancy. The appellant made several attempts taking her to Fertility Centre and I.V.F. method, but still she could not conceive pregnancy. The grievance of the appellant is that the respondent never used the medicines regularly prescribed by the doctor. It is his further grievance that she tried to alienate him from other family members.

12. It is pertinent to mention here that none of the above circumstances establish the cruelty, basing on which, the appellant seeks divorce. In fact, the appellant has miserably failed to prove acts of cruelty. Mere failure to conceive pregnancy and her failure to use medicines as prescribed by doctors and her failure to participate in sex as and when desired by the appellant are not at all grounds of cruelty. They are at best instances of some inconvenience to the appellant, but cannot be said even by stretch of screwed logic that it amounts to cruelty. The contention of the appellant is that the respondent has been given treatment from several doctors, however, the appellant has not filed even a scrap of paper to establish the same and he has not examined any of the doctors. More over, even if any treatment is given normally for any tradition bound Hindu wife, the priority would be having children in smooth married life. The further ground of the appellant is that the respondent filed complaint under Section 498-A IPC and Sections 3 and 4 of the D.P.Act., but no such case registered against the appellant under the aforesaid provision and even if a case is registered, it does not constitute cruelty.

13. In **A.Subba Raju v. A.Sunitha**¹, this Court held that filing of complaint or giving of report or pursuing the case was intended to harass and ill-treat the husband that does not constitute cruelty and similarly mere allegation does not constitute cruelty.

¹ 2015(4) ALD 614 D.B.

14. Mental cruelty in Section 13(1)(ia) of the Act can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the appellant. While arriving a such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living together in case they are already living apart and all other relevant facts and circumstances which is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations regard must be also held to that context in which they were made.

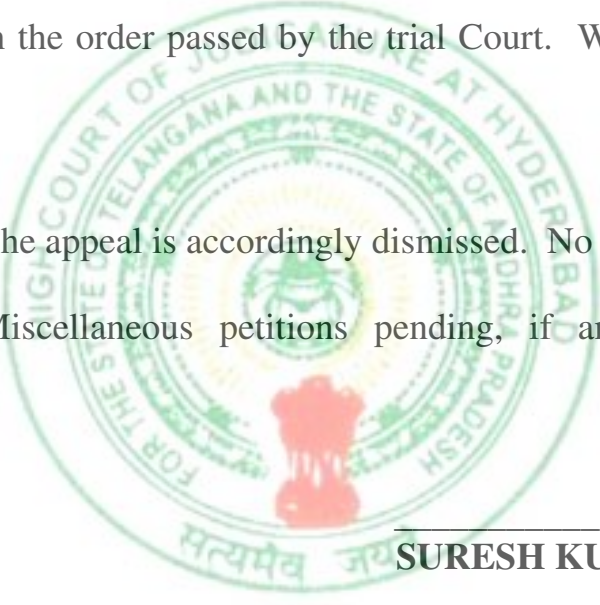
15. Admittedly, the appellant is working as a teacher and earning salary. As per deposition of R.W.1, the appellant used to beat her indiscriminately creating street brawl situations. Several panchayats were held and panchayat elders warned the appellant to change his attitude and to maintain cordial relation with her.

However, there was no change in his attitude. The respondent suffered the cruelty stoically with a hope that he would change his attitude, but there was no change. On the contrary, the appellant stepped up harassment day-by-day due to which she even attempted to commit suicide. The respondent is a house maker and now survives only on the petty amount of Rs.4,000/- awarded under Section 125 Cr.P.C.

16. In view of above discussion, we find no perversity or discrepancy in the order passed by the trial Court. We find no merit in the appeal.

17. The appeal is accordingly dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.



SURESH KUMAR KAIT, J

N. BALAYOGI, J

30th August 2017.

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