

HON'BLE SRI JUSTICE SANJAY KUMAR

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.188 OF 2005

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

1. This appeal arises from the order dated 03.11.2004 passed in O.P. No.210 of 2003 by the Judge, Family Court, Secunderabad (For short, 'the trial Court').

2. The case of the appellant-petitioner, as averred in the petition, in brief, is as follows:

The appellant-petitioner married the respondent on 21.05.1995 at Mahankali Temple, Secunderabad, as per Hindu rites and customs. Since the marriage, the appellant found the respondent as a quarrelsome lady and she made the life of the appellant miserable since the inception of the marriage and she has been under the influence of her parents. The respondent deserted the appellant on 08.03.2001 and went to her parents' house with her belongings. She also took away the new born daughter with an intention to harass the appellant. Thereafter, the respondent left India and went to United Kingdom; this fact came to the knowledge of the appellant much later through others. The appellant earlier filed O.P. No.27 of 2002 on the file of the Judge, Family Court at Secunderabad for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955'). After receipt of the notice from the Court in O.P. No.27 of 2002, the respondent filed a private complaint before the XXII Metropolitan Magistrate Court, Hyderabad which was referred to the Women Police Station, and later it was referred to the Malkajgiri Police Station. Malkajgiri Police arrested the appellant on 08.01.2003 and

detained him for one full day and night in the police station and thereafter he was produced before the Munsif Magistrate, Ranga Reddy District, on 09.01.2003. The appellant sustained lot of mental agony and cruelty due to the mental torture meted out by the respondent. The respondent has given complaint against the parents of the appellant and they obtained anticipatory bail. The respondent also has given a complaint against the appellant to his employer and the employer of the appellant called the appellant on 21.01.2003 and advised him to apply leave and the appellant continued to be on leave until the criminal case is completed. Hence, the appellant filed the present petition under Section 13(1)(ia) and (ib) of the Act of 1955, seeking dissolution of his marriage with the respondent on the grounds of cruelty and desertion.

3. The respondent filed counter before the trial Court denying all the allegations made in the petition. The contentions raised by the respondent in the counter are as follows:

At the time of marriage, the appellant and his relatives demanded a sum of Rs.1,00,000/- including gold articles and her father incurred Rs.60,000/- towards marriage expenses. Her father agreed to give a residential plot of 300 square yards at Kondapur, Hyderabad. After she joined the appellant at the matrimonial home, the appellant and his parents started harassing her for jewellery and ill-treated her. The appellant always misappropriated the salary of the respondent and he never provided her even the basic necessities and apart from that, he used to pass cruel remarks against her by suspecting her character. The appellant has no love and affection towards her, even in the pregnancy days and used to beat her and made her write some letters by force in order to use them to his benefit in future. The appellant necked her out in the month of March, 2001, along with her child by retaining all gold

jewellery and dowry amount and threatened her unless the agreed land is registered in his name, he would not take back her. The appellant, with a *mala fide* intention, filed O.P. No.27 of 2002 under Section 9 of the Act of 1955 for restitution of conjugal rights. During the pendency of O.P. No.27 of 2002, filed by the appellant, she filed a private complaint against the appellant. She has nothing to do with the suspension of the appellant by his employer. There is no cause of action in filing the present petition.

4. The appellant filed a rejoinder before the trial Court stating that he did not force the respondent to take up any job, she went for employment on her own from November, 1996, and she deposited all her salary in her personal account but he never took a single pie from her salary. He further stated that he never suspected her character and she went to United Kingdom without informing him. During pregnancy of the respondent, he gave her utmost care and attention and got her regular medical check-ups at Shenoy Nursing Home but he never demanded Rs.50,000/- at the time of her delivery and she left him on her own with all her belongings including gold, silver, clothing and their child.

5. The trial Court, after considering the evidence of P.W.1 and R.W.1 and upon hearing arguments of both parties, dismissed the petition, *vide* order dated 03.11.2004. Challenging the said order, the present appeal is preferred.

6. Sri N.Raghavan, learned counsel for the appellant, would submit that the appellant has proved the mental cruelty and desertion and the Court below ought to have granted divorce in favour of the appellant. The allegations of dowry harassment are made against the appellant without any substance; no witness is examined to substantiate the same; the respondent lodged false criminal cases against the appellant and his

parents. The marriage took place in the year 1995 and on 08.03.2001 the respondent deserted the appellant. Even on filing of O.P. No.27 of 2002 for restitution of conjugal rights, the respondent did not join the company of the appellant. In view of the desertion, the appellant is put to mental and physical torture. There is complete and total refusal on the part of the respondent to join the company of the appellant and ultimately prayed to grant decree of divorce by allowing this Appeal.

7. None appeared on behalf of the respondent.

8. In view of the material available on record, the **point** for determination is, whether the appellant is entitled for a decree of divorce, as prayed for?

9. **POINT:** P.W.1, appellant, has corroborated with the averments of the divorce petition. R.W.1, respondent, has corroborated with the contents of the counter filed by her. No other witness is examined in this case. The marriage of the appellant and respondent on 21.05.1995 as per the customs prevailing in Hindu Law is not in dispute. As per the evidence on record, on 07.03.2001, the respondent along with her daughter left the house of the appellant and she went to United Kingdom for some time without the information or knowledge of the appellant. In spite of filing an application *i.e.*, O.P. No.27 of 2002 under Section 9 of the Act of 1955 for restitution of conjugal rights, the respondent did not join the company of the appellant. The conciliation proceedings between the parties failed. There is also record to show that the appellant and his parents were prosecuted for the offence under Section 498-A I.P.C. and under Sections 4 and 6 of the Dowry Prohibition Act, 1961. The appellant was remanded to judicial custody in the criminal case from 08.01.2003 to 16.01.2003. The respondent also gave complaint to the employer of the appellant and the

appellant was forced to go on leave. From the date of desertion, the respondent was living with her parents. There are also allegations of abusing and insulting the appellant against the respondent. The appellant is denied the company of his daughter. Though the demands of dowry allegations are made against the appellant, the same were not proved.

10. As per the evidence on record, both the parties are living separately from more than 16 years; there is no patch up between the parties; all their negotiations failed. The Court below held that there was no intention on the part of the respondent to end the matrimonial relationship with the appellant and the appellant miserably failed to establish his case for divorce, but as per the evidence on record, the appellant has proved all the requirements of Section 13(1)(ia) and (ib) of the Act of 1955. The findings of the Court below are contrary to law and evidence on record. There is absolute repudiation of the obligations of the marriage on the part of the respondent. There is breakup of the marriage between the parties and there is no possibility of their living together as husband and wife. The appellant has successfully proved his case for divorce on the ground of cruelty and desertion. No other view is possible. Therefore, the appellant is entitled for a decree of divorce, dissolving the marriage between him and the respondent, as prayed for.

11. In the result, the Civil Miscellaneous Appeal is allowed granting decree of divorce, dissolving the marriage between the appellant and respondent, as prayed. The impugned order dated 03.11.2004 passed in O.P. No.210 of 2003 by the learned Judge, Family Court at Secunderabad is set-aside accordingly.

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

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 18-09-2017.
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AND

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

Date. 18-09-2017

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