

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SMT JUSTICE T. RAJANI

ECA.No.4 of 2016

DATED: 10.04.2017

Between

Ethamukkala @ Kosuru Vijaya Lakshmi.

...APPELLANT

And

Ehamukkala Chinna Abbaiah.

...RESPONDENT

COUNSEL FOR THE APPELLANT: MR. C. SUBODH

COUNSEL FOR THE RESPONDENT: SMT. K. PALLAVI

For MR. VENKAT RAO RAULAPALLI



THE COURT MADE THE FOLLOWING:

JUDGMENT: (*per the Hon'ble Smt Justice T. Rajani*)

The unsuccessful wife – petitioner files this appeal aggrieved by the order dated 31.07.2015 in FCOP.No.154 of 2011 on the file of the Family Court, Nellore.

2. The grievance of the appellant is with regard to the order of dismissal passed in FCOP.No.154 of 2011, which is filed by the appellant seeking for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short 'the Act') read with Section 7 of the Family Courts Act.

3. The order is assailed on the ground that the family Court ought to have seen that the respondent failed to prove the allegations made in the petition for restitution of conjugal rights having regard to Section 13(1)(ia) of the Act coupled with the evidence of P.W.1 and documentary evidence. The family Court ought to have seen that the conditions envisaged under the said section are satisfied and it ought to have allowed the petition. The family Court ought to have considered that the respondent never used to attend to the job and used to consume alcohol and play porn CD's and used to insist her to watch them along with him. The family Court ought to have considered that the appellant came to know about the criminal case filed by Delhi Police on 04.02.2009 and to escape from the clutches of the Delhi Police, the respondent jumped from Bangalore and visited the house after 15 days and when the appellant questioned him, he beat her. The family Court ought to have considered that the appellant came to her parent house in the month of March, 2009 and the respondent stayed at Nellore with her for a period of two months and thereafter,

he beat her and left the place. The family Court erred in holding that the appellant failed to satisfy the instances of cruelty in her petition.

4. Heard both the counsel appearing for the appellant and the respondent.

5. The other appeal preferred by this appellant in FCA.No.16 of 2016 is disposed of on the basis of the submission made by the respondent therein, who is also the respondent in this appeal, that, having failed in his attempts to bring the appellant to his house in pursuance of the decree of restoration of conjugal rights, he gave up such attempts. The appeal was hence disposed of without going into the merits of the case.

6. At the hearing, the counsel for the respondent though submitted that he filed a separate petition for divorce, he sought dismissal of this appeal on the ground that allowing this appeal by considering that a divorce petition is already filed by him, would leave a social taboo on him as several unsustainable allegations are made against him. The appellant's counsel reiterated the grounds of appeal, while arguing the case.

7. A perusal of the judgment of the family Court and the record consisting of the evidence adduced by either party would show that the appellant apart from examining herself as P.W.1, examined her father as P.W.2. The respondent apart from examining himself as R.W.1, examined an elder lady, who allegedly mediated with regard to the grievance of the parties, as R.W.2. The family Court observed that the evidence of P.W.1 is not corroborated by the evidence of P.W.2

with regard to the alleged beating by the respondent and it refused to believe the evidence of P.W.1 without corroboration, which cannot be treated as an erroneous approach. It also rightly considered the evidence on record with regard to the time when the appellant herein left the company of the respondent. The evidence shows that she left the company of respondent in the month of March 2009 and she did not choose to file any petition or complaint against the respondent, though the alleged acts of the respondent, according to her, constituted cruelty.

8. One allegation with regard to the criminal case filed against the respondent is also made by the appellant but the details of the said case are not stated either in the petition or in the evidence. The simple filing of a criminal case against a person cannot be considered as conclusive proof that he is a criminal. There is no evidence as to whether the said criminal case is pending or disposed of. Unless the criminal case ends with some finding against the respondent, which would make it impossible for the appellant to lead her life with the respondent, the same cannot be taken as a ground for seeking divorce. The respondent admits filing of a criminal case but he also does not state about the stage of the said case. Hence, no guidance is offered by the evidence of the respondent also. However, when there is no pleading to the effect that the criminal case is still pending or that the criminal case has ended in conviction of the respondent, no basis can be taken from the said criminal case.

9. With regard to the other allegation of cruelty and harassment, as rightly observed by the family Court, there is no corroboration to

the evidence of P.W.1 and her conduct in not making any complaint with regard to the alleged cruelty and harassment would drain out the credulity in her allegations. There is also no need to differ with the judgment of the family Court with regard to the finding on the presentation of dowry and there is absolutely no evidence in that regard. Hence, the conclusion drawn by the family Court based on the fact of no evidence cannot be found fault with. The evidence of R.W.2 would also tilt the balance in favour of the respondent to show that it is the appellant, who has withdrawn herself from the association of the respondent and she is not coming forward with true disclosure of facts. R.W.2 is stated to be a relative of both the appellant and the respondent. She categorically states that she along with others held mediation at Venkateswarapuram, which is the place of parents of the appellant and the appellant refused to join the respondent. No instances of cruelty seem to be reported to R.W.2, so as to infer that there was some reason for her to refuse the proposal of R.W.2 to join the respondent. Hence, with the above evidence, the family Court cannot be expected to do better than what it has done in this case.

In the result, the family Court appeal is dismissed.

As a sequel, to the dismissal of the appeal, FCAMP.No.7 of 2016 is dismissed as infructuous.

C.V. NAGARJUNA REDDY, J

T. RAJANI, J

April 10, 2017
DSK