

HON'BLE SRI JUSTICE SANJAY KUMAR

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.49 OF 2006

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

1. This appeal arises from the order dated 17.09.2005 passed in H.M.O.P. No.133 of 2002 by the Principal Senior Civil Judge, Narasaraopet, Guntur District (For short, 'the trial Court').

2. The appellant herein is the petitioner in the above O.P. filed the petition against the respondent for dissolution of marriage on the ground of desertion under Section 13(1)(ib) of Hindu Marriage Act, 1955 (For short, 'the Act'); wherein, he averred that the marriage between them was performed on 11.07.1977, according to Hindu dharma sastras and caste custom. Thereafter, they joined together to lead marital life and during their marital life, they begot three children *i.e.*, two sons and one daughter, who are all majors by the date of filing of the petition. The appellant was working at Savalyapuram and the respondent herein and her children were residing at Muppalla. In spite of his repeated request, she did not join his company and bluntly refused to do so and further she did not join his company in spite of negotiations made through the elders. The appellant contended that the respondent voluntarily deserted the petitioner and ultimately prayed to grant dissolution of marriage between him and the respondent.

3. The respondent filed counter admitting her marriage with the petitioner and begetting the children and contended that three years prior to the date of filing of the petition, the appellant herein had developed

illegal intimacy with one Chukka Varadanamma and started to neglect her and her children. When she questioned him about the illegal intimacy with Chukka Varadannamma, the appellant picked up quarrel with her and left the house leaving her and her children and stopped visiting them. Thereafter, filed the divorce application on all false grounds and ultimately she prayed to dismiss the petition.

4. During pendency of the divorce application in the trial Court, the appellant has examined PWs.1 to 3 and the respondent herein has examined RWs.1 to 3 but no documents were marked on behalf of both the parties.

5. Having considered the entire material available on record, the trial Court did not believe the evidence of PWs.1 to 3 and the case set-up by the appellant and held that there was no desertion on the part of the respondent and was pleased to dismiss the application for dissolution of marriage *vide* the impugned order.

6. In this case a notice was served to the respondent, even though she did not choose to appear till date.

7. Learned counsel for the appellant would submit that there are justifiable grounds to interfere with the order and grant divorce in favour of the appellant herein.

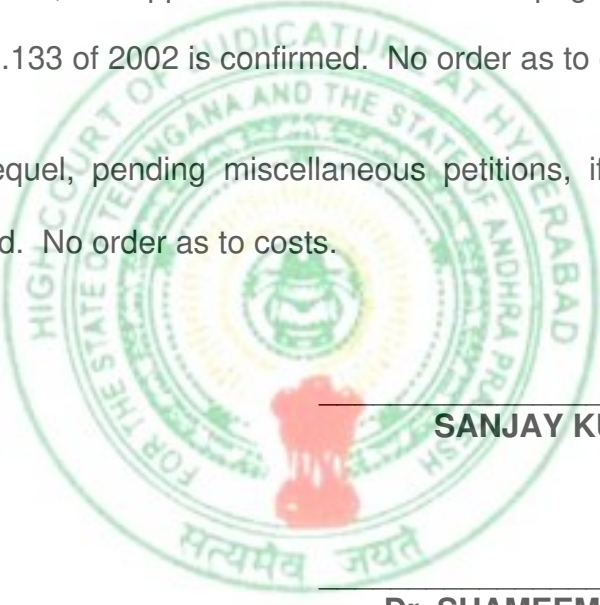
8. In view of the contentions put forth by the appellant, the **point** for determination is whether the marriage between the appellant and respondent can be dissolved and the impugned order be varied accordingly?

9. **POINT**: It is pertinent to state that R.W.1 is the respondent herein. R.Ws.2 and 3 are the major sons of the appellant and respondent.

R.Ws.2 and 3 clearly and categorically deposed about the appellant developing illegal intimacy with Chukkapalli Varadanamma and living with her and they did not say anything about the respondent herein deserting or staying away from the company of the appellant on her own. The evidence of R.Ws.1 and 2 can be given credence over the evidence of P.Ws.1 to 3. In view of this, it can be safely held that the appellant failed to prove the grounds as contended in the application for grant of divorce under Section 13(1)(ia) of the Act. The appeal is devoid of merits. The point is answered in favour of the respondent.

10. In the result, the appeal is dismissed. The impugned order passed in H.M.O.P. No.133 of 2002 is confirmed. No order as to costs.

11. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 10-08-2017.
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(Judgment of the Division Bench delivered by
Hon'ble Dr. Justice Shameem Akther)

Date. 10-08-2017

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