

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE P. KESHA RAO**

F.C.A. No.178 of 2015

JUDGMENT: (Per Hon'ble Sri Justice P. Keshava Rao)

Heard counsel for the appellant as well as the respondent.

2) The present appeal is filed against the orders passed in O.P.No.23 of 2011, dated 11.05.2015, on the file of the Court of the Judge, Family Court at L.B. Nagar, Ranga Reddy District.

3) The facts of the case are that originally the appellant herein filed the abovementioned O.P.No.23 of 2011 under Section 13(1)(ia) and (ib) of the Hindu Marriage Act (for short, "the Act") for dissolution of marriage between him and the respondent. It is his case that his marriage with the respondent was performed on 15.04.2006 at BHEL Township, Ramachandrapuram as per Hindu Vedic rites and customs in a simple manner as both the parties hail from middle class families. At the time of marriage except the customary goods and articles, nothing was demanded or given to him. After marriage the respondent joined his conjugal life. The marriage was consummated, however, out of wedlock there are no issues between them. The appellant also stated that along with him his old age ailing mother is living while the five other sisters, who are already married, are well settled

and living in their respective houses. His father died on 18.01.1997. As far as the respondent is concerned, he makes specific allegations that she was never interested either in the conjugal life or attended the domestic chores and his aged ailing mother alone was doing the entire domestic work. The respondent confined herself to the bedroom and used to watch T.V. She also used to demand costly gifts and to setup a separate house in a rented portion leaving his mother to his sisters. During the most passionate of togetherness when the appellant refused to oblige for her demands, she became aggressive and used to abuse him on petty issues at a high pitch attracting the attention of the neighbours. Subsequently, the respondent left the conjugal society without even informing to him. For the first time in the month of July, 2006, on the pretext of Aashaada Masam she left him and thereafter did not return. After lot of persuasion to return back to the matrimonial house and ultimately on 23.10.2006 she returned to the appellant at the instance of their brother-in-law. Even thereafter there was no change in her attitude and continued her aggressive nature and quarreled on petty issues and in the process again left the matrimonial house on 02.12.2006 after taking all her belongings in the absence of the appellant. On 04.12.2006, she approached the Women Protection Cell, CID, Hyderabad, who, in turn, summoned the appellant, his mother and sister and after counseling them, they realized that the mistake lies

with the respondent and asked her to mend her ways and join the appellant, but the respondent failed to do so. In those circumstances, the appellant, finding no other way, filed the petition for dissolving the marriage between them on the ground of cruelty as well as desertion since the respondent herself left his conjugal society voluntarily without informing him and without there being any reasonable cause.

4) Per contra, the respondent filed a counter affidavit denying the averments made in the petition and contended *inter alia* that she always showered lot of love and affection not only on the appellant, but also on her mother-in-law and did all her house hold work, but the mother of the appellant along with his sister used to harass her both mentally and physically. She also claimed that she used to wash utensils, cloths apart from sweeping the house and preparing food for the appellant and other family members. The respondent also stated that the appellant used to come to home late in the night in a drunken condition and used to bring whisky bottles with him and harassed her on the instigation of his mother and sister, who reside in the top portion of their house. Therefore, the question of the respondent not adjusting with the appellant and his family members is not correct. In fact, when she left to her parents house during the Aashaada Masam, she was affected with Chickenguniya, but in spite of informing the same to the appellant he did not

respond. She returned to the appellant on 23.10.2006, which being his birthday, then also the appellant along with his mother and sister harassed her mentally and physically and the appellant and his mother, after shouting and scolding the respondent at the entrance, did not allow her to enter into the house. The respondent also claimed that the appellant and his mother used harsh words and filthy language. Therefore, the parents of the respondent contacted the mediator i.e., the brother-in-law of the appellant, who performed their marriage. Ultimately, on 21.12.2006, the appellant along with his mother necked out the respondent from the matrimonial house. Yet she used to continue to visit them till September, 2010 when she was again thrown out of the house. The respondent also claimed that during her stay with the appellant, he along with his brother-in-law used to visit Bangalore all of a sudden and when questioned, he used to tell that they will be shifting to Bangalore shortly and will be in a position to lead a happy life with the respondent. The respondent also specifically contended that she never had meals with the appellant on the dining table at any time and the appellant used to come to the bedroom only after taking permission from his mother apart from other aspects.

5) Basing on the above said pleadings, the Court below has framed the following issue/point for consideration:

“Whether the petitioner is entitled for dissolution of the marriage U/s.13(1)(ia) i.e., cruelty and 13(1)(ib) i.e., desertion of Hindu Marriage Act?”

6) In support of his case, the appellant examined himself as PW.1 and marked Ex.P1 i.e., the marriage card on his behalf. On the other hand, the respondent examined herself as RW.1, but did not choose to mark any documents on her behalf.

7) The Court below, after considering the pleadings and appreciating the evidence let in by both the parties, was pleased to dismiss the petition by order, dated 11.05.2015, holding that the appellant neither adduced any evidence to show that the respondent inflicted cruelty on him by neglecting him nor the respondent left his company without any reason or right. Aggrieved by the said orders, the present appeal is filed.

8) Counsel appearing for the appellant basically contended that the Court below failed to appreciate the evidence let in by the appellant in proper perspective and failed to draw inference from the attending circumstances that the respondent never mend her ways in changing her behavior to lead a happy marital life with the appellant. The Court below did not consider the aspect of intention of the respondent when she deserted the appellant. Counsel also brought to the notice of the Court the pleadings made in paragraphs 6, 7 and 8 of the original petition and also paragraph 10 of the counter affidavit and contended that the respondent admitted that she left the conjugal society of the appellant on

02.12.2006 without any reasonable cause and therefore the Court below ought to have allowed the petition on the ground of desertion. As the parties are leaving separately since July, 2006, the Court below ought to have inferred the intention behind the said desertion by the respondent that she was not willing to continue the marital life with the appellant and that itself would be a ground for granting a decree of divorce. In support of his contention, he relied on the judgments of the Supreme Court in **Naveen Kohli v. Neelu Kohli**¹ and **Sanat Kumar Agarwal v. Smt. Nandini Agarwal**².

9) The facts and the relevant paragraphs relied on in **Naveen Kohli (1 supra)** are as follows:

The appellant husband was married to the respondent in November 1975. According to the appellant, after marriage, the respondent wife started quarelling and misbehaving with him and his parents and ultimately the appellant was compelled to leave the parental residence and started to reside separately in a rented premises from May 1994 and has been so living separately since then. The appellant filed a petition under Section 13(1)(i-a) of the Hindu Marriage Act for divorce on ground of cruelty. The appellant alleged several facts in support thereof. The respondent filed a number of cases, including criminal complaints against the appellant and made every effort to harass and torture him

¹ (2006) 4 SCC 558

² AIR 1990 SC 594

and even get him arrested and put him behind the bars. In this connection specific instances were given by the appellant. Further, the respondent had sent notice for breaking the nucleus of HUF expressly stating that the family nucleus had been broken with immediate effect and asking for partition of all the properties and assets of HUF and stating that her share should be given to her within 15 days. She had filed a complaint against the appellant under Section 24 of the Hindu Marriage Act directing payment of maintenance during the pendency of the case. This was rejected by the trial Court and she later filed an appeal in the High Court. The respondent had withdrawn Rs.9,50,000/- from the bank account of the appellant in a clandestine manner. She got an advertisement issued in a national newspaper that the appellant was only her employee. She got another news item issued cautioning the business associates to avoid dealing with the appellant. Both the parties have leveled allegations against each other for not maintaining the sanctity of marriage and involvement with another person. According to the respondent, the appellant is separately living with another woman. According to the appellant, the respondent was seen indulging in an indecent manner and was found in a compromising position with one R. But according to the findings of the trial Court both the parties failed to prove the allegations against each other. The trial Court found that the appellant was mentally, physically and financially harassed

and tortured by the respondent. According to the trial Court, there was no possibility to reconnect the chain of marital life between the parties and there was no alternative but to dissolve the marriage between the parties. The trial Court also stated that the respondent had not filed any application for allowing permanent maintenance and stridhan, but in the interest of justice it directed the appellant to deposit Rs.5 lakhs towards permanent maintenance of the respondent. The respondent preferred first appeal which was allowed by the High Court. The High Court took the view that the trial Court had not appreciated and evaluated the evidence on record properly that the appellant was living with another woman and that actions of the appellant amounted to misconduct, uncondonable for the purpose of Section 13(1)(a) of the Hindu Marriage Act.

10) The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

11) In **Sandhya Rani v. Kalyanram Narayanan**³ the Apex Court reiterated and took the view that since the parties are living separately for the last more than three years, we have

³ 1994 Supp (2) SCC 588

no doubt in our minds that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce.

12) In **Chandrakala Menon v. Vipin Menon**⁴ the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted the decree of divorce.

13) In **Kanchan Devi v. Promod Kumar Mittal**⁵ the parties were living separately for more than 10 years and the Court came to the conclusion that the marriage between the parties had to be irretrievably broken down and there was no possibility of reconciliation and therefore the Court directed that the marriage between the parties stands dissolved by a decree of divorce.

14) In **Swati Verma v. Rajan Verma**⁶ a large number of criminal cases had been filed by the petitioner against the respondent. This Court observed that the marriage between the parties had broken down irretrievably with a view to

⁴ (1993) 2 SCC 6

⁵ (1996) 8 SCC 90

⁶ (2004) 1 SCC 123

restore good relationship and to put a quietus to all litigations between the parties and not to leave any room for future litigation, so that they may live peacefully hereafter, and on the request of the parties, in exercise of the power vested in this Court under Article 142 of the Constitution, the Court allowed the application for divorce by mutual consent filed before it under Section 13-B of the Hindu Marriage Act and declared the marriage dissolved and granted the decree of divorce by mutual consent.

15) In **Durga Prasanna Tripathy v. Arundhati Tripathy**⁷ this Court further observed that marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce.

16) Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and

⁷ (2005) 7 SCC 353

human values to which they attach importance. Each case has to be decided on its own merits.

17) The relevant portion relied on by the counsel for the appellant in **Sanat Kumar Agarwal (2 supra)** is as follows:

“It is well settled that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case and those facts have to be viewed as to the purpose which is revealed by those facts or by conduct and expression of intention, both interior and subsequent to the actual act of separation. The case of the petitioner Sanat Kumar with regard to desertion was that he was married to Nandini on 11.6.1978 and on the same day his sister Shakuntala was married to Shivnarain, brother of Nandini. Thereafter some differences had arisen between the parties with the result that Nandini returned back to her parents house and the appellant's sister Shakuntala also left her husband's house and came to her parents house. On 28.11.1978 the appellant along with his sister Shakuntala and his mother came to meet Shivnarain and then another meeting took place on 1.12.1978 and the parties came to a settlement. Following the settlement, the appellant Sanat Kumar took Nandini to his house while Shivnarain took Shakuntala to his house after performing Vida ceremony. It has been alleged by the appellant that on 8.12.1978 Shakuntala reached her parents house from her in-laws house and on 9.12.1978 Nandini also went to her parents house after leaving her matrimonial house. It has been alleged that the appellant is a highly educated person belonging to a cultured family. He is posted as a Science Officer in the Nuclear Power Department. The respondent, Nandini is also M.Sc., B.Ed. and is employed as a teacher. According to the appellant the duration of matrimonial relations between the parties continued only for six months. During this short period they had to face tremendous ups and downs in their matrimonial relationships, in which the solemnization of marriage between the parties according to 'GURAWAT' system had played an important role. On 9.12.1978 Nandini went to her parents house herself and since then she has been residing with her parents. Despite the appellant having forbidden her she passed B.Ed. and joined service as a teacher against the wishes of the appellant. Nandini left the matrimonial house on 9.12.1978 without any cause or reason and thereafter did not resume her matrimonial obligations nor returned back to the matrimonial house and this amounted to desertion. The present petition for divorce was filed on 6.2.1982. It may be mentioned that Shivnarain had filed the petition for 'divorce against Shakuntala, sister of the appellant on 1.1.1982. Learned 1st Additional District Judge, while dealing with issue No. 2 regarding desertion though believed the statement of the appellant yet decided the question of desertion against the appellant by making following observations:

Even if, this statement is accepted to be correct, it does not reveal that the respondent had decided to put an end to marital relationship and co-habitation and had gone from the matrimonial house to her parents house. On the contrary, the respondent has stated that she was always ready and willing to reside with the petitioner.”

18) Per contra, the counsel appearing for the respondent would submit that the appellant failed to prove the aspect of cruelty as well as desertion by adducing any independent evidence. There are no specific pleadings in that regard in the petition more particularly with reference to desertion. He further contended that the appellant has not filed any third party affidavit to prove that there was voluntary desertion on the part of the respondent. Learned counsel mainly contended that when the respondent was thrown out from the matrimonial house and immediately thereafter when a divorce petition has been presented in the Court below, the ground of desertion is not available to the appellant.

19) Some of the important facts relating to the present case are that the marriage between the parties was performed on 15.04.2006 according to the Hindu Vedic rites and customs. According to the appellant, the conduct and behavior of the respondent would amount to cruelty and she has deserted him in the month of December, 2006. However, the specific pleading of the respondent in the counter is that she has not deserted the appellant. On the other hand, the appellant and his mother thrown out the respondent on the road forcefully on 02.12.2006 and in spite of the same, the respondent was

regularly visiting the appellant number of times and was with him till the end of September, 2010, when she was finally thrown out from the house. The appellant has filed the petition for divorce in the Court below on 11.12.2010, which was registered on 10.01.2011 that is about 1½ months after the respondent has been necked out of the house. In a way the respondent was not even given a breathing time to persuade the appellant to have continuation of the marital relationship. This Court can also presume that when once a petition for divorce is filed, there will not be any chance for the respondent to take any remedial steps either in the form of issuing a notice for restitution of conjugal rights or otherwise.

20) Though specific pleadings are made, neither the appellant herein being the petitioner nor the respondent in the petition let in any evidence to substantiate their respective contentions. Except examining themselves as PW.1 and RW.1, there is no other evidence forthcoming to establish as to whether the allegations made by the appellant herein or the respondent are correct or not. At best, it could be only an oath against an oath. In these circumstances, since the appellant herein has approached the Court for grant of divorce on the grounds of cruelty and desertion, burden lies on him to prove the same. As mentioned supra, except the self-serving evidence of the appellant as PW.1, there is

absolutely no other independent evidence to prove the aspect of cruelty as well as desertion. But, at the same time, this Court cannot lose sight of an admitted fact that the parties are living separately for the last 11 years, according to the appellant, and 7 years, according to the respondent.

21) The other important aspect is that even during the course of final arguments in the present appeal, though the respondent sought for dismissal of the appeal on the ground that she was harassed by the appellant, his mother and sister, there was no statement that she is willing to live with the appellant for leading a happy marital life. If the Court looks at from this angle, it appears that the respondent is also not willing to continue the matrimonial relationship with the appellant. Though the appellant failed to prove the allegations of cruelty and desertion by leading any independent evidence, but the intention on the part of both the parties can be looked into for the purpose of deciding as to whether the marriage between them is irretrievably broken down or there is any chance of reunion between them even now. In this context, this Court also cannot lose sight of the fact that when the appellant was passing through the disturbed period or living a wayward life outside the matrimonial house, there was no positive response from the respondent to bring him to the matrimonial house for the purpose of restoring the normalcy and at the same time when

the respondent was suffering with Chickenguniya and was in grief on the occasion of the death of her grandmother, the appellant did not visit her either for taking care or for consoling her. These instances clinchingly prove that the bond of love out of matrimonial relationship seems to have totally faded away between them. Therefore, this Court can safely presume that there is no intention on the part of both the parties to live together and lead a happy marital life.

22) Therefore, relying on the ratio decided in various judgments as stated supra, this Court finds that the marriage between the appellant and the respondent has been irretrievably broken down and there is no chance of reunion. In these circumstances, even if we dismiss the appeal on the ground that the appellant failed to establish the cruelty and desertion before the Court below, it would amount to continuation of the agony between the parties which has a drastic effect not only on them, in particular, but also on the society in general. Therefore, we have no other option except to allow the appeal and set aside the judgment of the Court below.

23) In the aforesaid facts and circumstances of the case, the appeal is allowed setting aside the order and decree in O.P.No.23 of 2011, dated 11.05.2015, on the file of the Court of the Judge, Family Court at L.B. Nagar, Ranga Reddy District and consequently the marriage between the appellant

and the respondent is dissolved by a decree of divorce.
Interim orders, if any, shall stand vacated. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

C. PRAVEEN KUMAR, J

P. KESHAVA RAO, J

Date: 22.12.2017.
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