

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CIVIL MISCELLANEOUS APPEAL No.714 of 2005

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

This appeal comes before us aggrieved by the order of the Senior Civil Judge, Piler in OP.No.18 of 2002 dated 28.08.2004 granting divorce to the petitioner, who is the husband of the respondent therein. The ground on which divorce was granted is desertion by the respondent – wife.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed in the original petition. The facts, as put forth by the petitioner in the original petition filed in the Court below, are briefly as follows:

The marriage between the parties took place on 22.05.1996 at Doddavaripalli and out of the wedlock, a daughter was born on 21.03.1997. The respondent never liked staying in the house of the petitioner and she used to demand to separate himself from his parents and live with her in her parents house for which the petitioner as he is the eldest son to his parents. The respondent refused to join and stay in the house of the petitioner and as such, she deserted him in September 1996. When the mediations conducted turned futile, the petitioner filed OP.No.81 of 1997 seeking restitution of conjugal rights before the Principal Senior Civil Judge, Chittoor. The respondent, though engaged an advocate and took time for filing counter, subsequently did not choose to contest the same and remained *ex parte*. Consequently, a decree was passed in favour of

the petitioner for restitution of conjugal rights on 09.07.1998. The respondent did not choose to comply with the said decree and in turn she filed MC.No.6 of 1998 seeking maintenance for herself and her minor child. The Court below, however, granted maintenance to the daughter and refused to grant maintenance to the respondent. Since the petitioner had no hope of the respondent joining him, he filed the petition for divorce.

The respondent filed counter admitting her relationship with the petitioner, however, denied the contents of the petition filed by the petitioner and stated that the mediations were held at her instance and not at the instance of the petitioner. She admitted filing of OP for restitution of conjugal rights by the petitioner but the reason stated by her for not contesting the same is that the petitioner threatened her. According to her, the petitioner and his family members drove her out of the house and they demanded additional dowry of Rs.50,000/-, apart from that gold and land. She could not prefer an appeal against the order refusing to grant maintenance to her but she admitted that the petitioner preferred an appeal against the said orders granting maintenance to their daughter.

Petitioner examined himself as P.W.1 and got marked Ex.A1. The respondent got examined herself as R.W.1 and examined R.W.2 in support of her case but did not choose to mark any documents. The Court below, after considering the evidence and material on record, passed the impugned order against which the present appeal is preferred by the respondent on the grounds that the Court below ought to have seen that the ingredients of Section 13 of the Hindu

Marriage Act are not made out and it failed to give reasons for granting divorce. The Court below granted divorce on the ground that the respondent had not contested in OP.No.81 of 1997 and did not join the petitioner. The Court below failed to see that the petitioner had not made any effort to take the respondent since OP.No.81 of 1997 had been allowed and the Court below ought to have seen that non-contesting in OP.No.81 of 1997 itself indicates that the respondent is willing and is interested to join and live with the petitioner.

3. Heard both sides.

4. The counsel for the appellant-respondent submits that the Court below has arrived at a wrong inference based on the fact of non-contest by the respondent in OP.No.81 of 1997, which is filed by the petitioner for restitution of conjugal rights, wherein a decree for divorce was granted on the ground of desertion. Except the above argument, the counsel for the appellant is not able to make out any argument against the impugned order.

5. The admitted facts are that the respondent left the company of the petitioner in the year 1996 and OP.No.81 of 1997 was filed by the petitioner seeking restitution of conjugal rights and after engaging an advocate, the respondent remained *ex parte* allowing the Court to make an *ex parte* decree granting restitution of conjugal rights. The respondent did not comply with the said decree. Subsequently, she filed MC.No.6 of 1998 and maintenance was declined to her, though it was granted to her daughter. From these facts, *prima facie*, it can be understood that the petitioner immediately after the

respondent left his company chose to seek restitution of conjugal rights by way of filing a petition before the Court below and the respondent was aware of the same, which can be understood from the fact that she engaged an advocate. In spite of a decree having been passed for restitution of conjugal rights, the respondent did not join the petitioner. Subsequently, she filed a maintenance case, which goes to show that she did not have any intention to join the petitioner and she wanted to live separately and be maintained by the petitioner.

6. The reasons for the Court below to refuse maintenance to the respondent, though are not known, can be understood to be respondent's non-entitlement as probably no wilful neglect was made out on the part of the petitioner in maintaining her and probably finding no reasonable cause for her to stay separately from the petitioner. Those are the only assumptions that can be made for the Court below to decline to grant maintenance to the respondent. If those are the reasons, the respondent in allowing those reasons to become final stands conceding to the finding of the court below based on those reasons. In such circumstances, the only conclusion that can be drawn is that the respondent has wilfully deserted the petitioner. The Court below has meticulously appreciated the evidence on record and the plea of the respondent that she was prevented by the petitioner from contesting OP.No.81 of 1997 was disbelieved by considering that the respondent was successful in maintaining a suit for partition on behalf of their daughter.

7. The evidence of R.W.2 was rightly disbelieved by the construing that time of mediation vis-à-vis the date of which R.W.2 gave evidence

and concluding the mediations, if any, spoken to by R.W.2 must have been only subsequent to the filing of this OP. Hence, in view of the failure of the respondent to make out any ground, which would drive us to differ with the impugned order, the appeal has to fail.

In the result, the civil miscellaneous appeal is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

C. PRAVEEN KUMAR, J

June 21, 2018
DSK

T. RAJANI, J

