

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T. RAJANI

CIVIL MISCELLANEOUS APPEAL No. 835 of 2005

JUDGMENT:

Assailing the order and decree dated 26.07.2005 in H.M.O.P.No.31 of 2003 on the file of the Senior Civil Judge, Chirala, wherein an application filed by the petitioner/ husband under Section 13(1)(ia)(ib) of the Hindu Marriage Act, seeking dissolution of marriage, was allowed, the present appeal came to be filed by the respondent/ wife.

2. For the sake of convenience, the parties are hereinafter referred to, as arrayed in the O.P.

3. The respondent is the wife of the petitioner. Their marriage took place in the year 1980 and out of wedlock, they were blessed with three children. Among them, the elder son was aged about (23) years and the two daughters were aged 22 years and 21 years respectively, at the time of filing the O.P in the year 2003. It is stated that the petitioner was an employee working as a Security Guard in the A.P.S.R.T.C. The averments in the petition show that from 1996 onwards, the petitioner and the respondent have been living separately. In the year 2002, the respondent filed M.C.No. 39 of 2002 seeking maintenance, which was allowed, directing the

petitioner/ husband to pay a sum of Rs.500/- per month to the respondent. The case of the petitioner is that in the year 1995, i.e., on 25.12.1995, the brothers of the respondent beat the petitioner indiscriminately and threw him away from the house. It is stated that the petitioner was hospitalized for about (18) days and thereafter, both of them shifted their family to Hyderabad, where they lived together for a year. It is stated that on the advice of the brothers of the respondent, and because of the pressure exerted by them, the respondent left his company and came to her parents at Chirala, by the end of 1996. It is further stated that efforts made by the petitioner through elders to bring back the respondent for cohabitation, failed.

4. Having regard to the above circumstances, and as the respondent was living separately since seven years prior to the filing of O.P., an application came to be filed by the petitioner/ husband under Section 13 of the Hindu Marriage Act, seeking dissolution of marriage.

5. A counter came to be filed by the respondent/ wife, disputing the averments made in the affidavit filed in support of the petition. According to the respondent, the petitioner got addicted to bad vices and used to harass her. It is stated that the petitioner is having an affair with one Koteswaramma and they are living as wife and husband at Ongole, and because of the illicit intimacy with Koteswaramma, the respondent, along with the children was necked out of the house. It is stated that the respondent borrowed

loans to an extent of Rs.1 lakh for the purpose of educating the children, and since the presence of the petitioner is very much necessary for running the family and taking care of the children, pleads that the request of the petitioner be rejected.

6. During the course of trial, the court below examined the petitioner as PW1 and respondent as RW1. No documentary evidence was adduced on behalf of either side. Basing on the averments in the affidavit, the trial court framed the following issue:

“1. Whether the petitioner is, in facts and circumstances, able to prove his entitlement for divorce on the grounds of cruelty and desertion (sec.13(1)(ia)(ib) of Hindu Marriage Act)

2. To what result?”

7. Basing on the oral evidence adduced by both the parties, the learned trial Judge allowed the application filed by the petitioner/ husband and granted divorce. Challenging the findings given therein, the present appeal came to be filed by the respondent/ wife.

8. The learned counsel for the appellant/ wife would contend that there is absolutely no evidence to prove that she has deserted the petitioner, and that both of them were living separately since 1996. On the other hand, it is stated that the petitioner himself left the company of the respondent and started living with one Koteswaramma. She also pleads that the petitioner voluntarily

deserted the respondent and children and neglected them, which led to filing of M.C.No. 39 of 2002 on the file of the Additional Munsif Magistrate, Chirala. It is urged that the present H.M.O.P has been filed by the petitioner making false allegations. Having regard to the circumstances stated, the respondent would contend that the trial court erred in granting divorce, on the ground of cruelty and desertion.

9. On the other hand, the petitioner/ husband would contend that the material on record amply establish that the appellant/wife deserted the petitioner in 1996, and since then, both of them have been living separately. He pleads that the children are living with the respondent since then, and having regard to the length of time, the question of both of them living together, will not arise.

10. As seen from the record, no documentary evidence has been adduced by either of the parties to prove their pleas. It is a case of oath against oath. There is no other evidence to prove the allegations and counter allegations made by both the parties.

11. One of the main grounds urged by the learned counsel for the respondent is that since 1996, the respondent and petitioner are living separately. As seen from the record, the marriage between the petitioner and respondent was a love marriage, which took place in 1980, and out of wedlock, they were blessed with three children. The evidence of the petitioner is that the respondent came to her parents' place at Chirala at the end of

1996, and since then, she never returned and joined the petitioner. The evidence of the respondent/wife in this regard, reads as under:

“In 1996 myself and my children came back from Chirala from Hyderabad and from then the disputes started between myself and the petitioner. From about 9 years there are no relations, visits between myself and petitioner. I did not send any notice through lawyer to the petitioner requesting for the restoration of marital life by explaining the difficulties facing by myself and my children. I sent elders to the petitioner for mediation. Presently my mother-in-law is residing with the petitioner. I did not get issue any notice to the petitioner explaining his conduct and demanding his attitude to be known to us.....I am not willing to take divorce though the petitioner is praying for it on the ground that I never visited him from about 9 years.”

12. Further, the evidence of the respondent would show that the petitioner/husband looked after the respondent and children well while he was working at Giddalur. The relevant portion in the evidence of the respondent is as under:

“The petitioner looked after me and my children well while we were at Hyderabad, though the petitioner was working at Giddalur.”

13. From the above, it can be said that while the petitioner and respondent were living in Hyderabad, disputes started between them when the respondent came back to Chirala in the year 1996, on the advice of her brothers. Therefore, the plea of the petitioner that since then, the respondent did not return and join

his company, cannot be brushed aside. Admittedly, the respondent never tried to resume cohabitation after she left the company of the petitioner in the year 1996.

14. Insofar as the allegation that the petitioner was having an affair with one Koteswaramma, it is to be noted that in her cross-examination, the respondent stated that she does not know whether the petitioner has married the said Koteswaramma. In the proceedings filed by her seeking maintenance, she admits that she did not examine any witness to speak in proof of marriage between her husband and the said Koteswaramma. She admits that she does not know the residential address of the petitioner at Ongole, as she never visited the said house. Therefore, the allegation that the petitioner was having illicit intimacy with Koteswaramma and that he was living with her at Ongole, cannot be accepted.

15. Therefore, the grounds on which divorce is sought, viz., desertion, in our view, stands established, since nine years prior to the filing of the O.P., the respondent/ wife was living separately from the petitioner.

16. In similar circumstances, the Apex Court in *S.BRAHMANANDAM v. S.RAMA DEVI*¹, held that once efforts for couple's reunion do not fructify, forcing couple to stay together will prove counter productive and it is bound to be source of greater misery for parties. Similarly, in *KALAPATAPU LAKSHMI*

¹ 2017 (1) ALD 241 (DB)

*BHARATI v. KALAPATAPU SAI KUMAR*², it is held that when the parties have been living separately for nearly 14 years, there can be no escape from the conclusion that the marriage has irretrievably broken down, and as held by the Hon'ble Supreme Court, a long time separation itself would lead to mental cruelty.

17. Having regard to the fact that the petitioner and respondent have been living separately and as the possibility of reunion between them being remote, we uphold the order of dissolution of marriage of the petitioner with the respondent, by confirming the findings in the order and decree dated 26.07.2005 in H.M.O.P.No.31 of 2003 on the file of the Senior Civil Judge, Chirala.

18. Accordingly, C.M.A is dismissed. As a sequel thereto, Miscellaneous Petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

12.07.2018
DMG

² 2017 (1) ALD 272 (DB)