

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

C.M.A.No.384 of 2016

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

1) The present appeal came to be filed under Section 28 of the Hindu Marriage Act, aggrieved by the order dated 06.01.2016, passed in H.M.O.P.No.28 of 2013 on the file of the Senior Civil Judge, Puttur, wherein an application filed by the appellant under Section 13 of Hindu Marriage Act, 1955 (for short, 'the Act'), seeking dissolution of marriage, was dismissed.

2) It is to be noted that pending appeal, both the parties have settled their disputes, which led to filing of a joint memo of compromise vide USR No.22044 of 2018, signed by the parties. In the said memo it is stated that the husband shall pay permanent alimony quantified as Rs.15 lakhs to the respondent –wife for past, present and future maintenance. The respondent accepted to receive the said amount and agreed to give divorce by mutual consent. It is further stated that the appellant/ husband paid Rs.4 lakhs by way of two demand drafts dated 16.09.2017 and 17.02.2018, State Bank of India, Nagari and for the balance of Rs.11 lakhs, obtained four demand drafts in the name of respondent/ wife, to be given to her before this Court at the time of recording the compromise.

3) Today both the parties are present before the Court and they were identified by their respective counsels. Further, both of them have produced Aadhar Card vide Nos.4654 0059 9910 and 9996 4688 4427 issued by the Government of India, showing their identity. The copies of the same are placed on record.

4) When examined, the respondent/ wife stated that she has received entire consideration and has no objection for grant of divorce. Further, both of them stated that they are intending to settle their dispute by taking divorce by mutual consent.

5) Having regard to the fact that both the parties are living separately since 2013 the question of respondent joining the husband, even if the appeal is dismissed, would not arise. Where there is long period of continuous separation, there can be no escape from the conclusion that the marriage has irretrievably broken down. Any attempt to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties for the rest of their lives.

6) Further the Apex Court in *Kohli Vs. Neelu Kohli*¹ held as under:

“We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the

¹ {2006 (4) SCC 558}

matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.

Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, then it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory”.

7) From the aforesaid discussion, the appeal is allowed setting aside the orders passed in H.M.O.P. No.28 of 2013 on the file of Senior Civil Judge, Puttur, dissolving the marriage between the appellant/ husband

and respondent/ wife, which was performed on 20.06.2011 in terms of the compromise. There shall be no order as to costs.

8) Miscellaneous petitions, if any, pending, shall stand closed.

C. PRAVEEN KUMAR, J

T. AMARNATH GOUD, J

16.04.2018
vnb

