

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ Family Court Appeal No.174 of 2017

% Date: 01-11-2018

B.Krishna Murthy S/o Late Somayajulu,
Aged 37 years, Occ: Employee, TCS, Hyderabad,
Now on deputation in United Kingdom,
R/o Flat No.401, Ramky Pride Aptts.,
Nizampet Road, Survey Nos.40 and 41,
Hydernagar, Kukatpally, Hyderabad
... Appellant/Petitioner

Vs.

\$ Chatti Naveena D/o C.L.N. Murthy, Employee,
Syndicate Bank, No.4-6, Ground Floor, 1 Main Road,
Gaurav Nagar, J.P. Nagar, VII Phase,
Bangalore-560 076, Karnataka State
... Respondent/Respondent

! Counsel for Appellant: Mr. P.Veera Reddy, Senior Counsel,
Representing Mr. Karri Murali Krishna

Counsel for Respondent: Mr. V.S. Somayajulu

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> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Family Court Appeal No.174 of 2017

Judgment: (per V.Ramasubramanian, J.)

This is an appeal filed by the husband challenging a decree of judicial separation granted by the Family Court, while refusing to grant a decree of dissolution of marriage.

2. Heard Mr. P.Veera Reddy, learned Senior Counsel for the appellant and Mr. V.S. Somayajulu, learned counsel for the respondent.

4. The marriage between the petitioner and the respondent was solemnized on 12-10-2011. It appears that the appellant is now working in London on deputation. The respondent is employed in Syndicate Bank in Karnataka. Therefore, the period during which the appellant and the respondent lived together was obviously shortened, though a child was born in the wedlock.

5. Considering the fact that there was no re-union, the appellant filed F.C.O.P. No.320 of 2013 seeking dissolution of marriage, on the ground of cruelty. The Family Court dismissed the prayer for dissolution of marriage, but granted a decree of judicial separation. Aggrieved by the said judgment and decree, the husband has come up with the above appeal.

6. We do not think that at this stage we have to go into the merits of the dispute between the parties to find out

whether any of the parties was at fault in matrimony. The reason is that the judgment of the Family Court is dated 13-02-2017. Instead of granting divorce, the Family Court granted a decree of judicial separation.

7. The respondent/wife has not come up with any appeal against the decree. Therefore, it may be taken that she is not aggrieved by the decree of judicial separation.

8. Under Section 13(1A)(i) of the Hindu Marriage Act, 1955, the appellant is entitled to seek dissolution of the marriage, on the ground that there has been no resumption of cohabitation as between the parties for a period of one year or upwards after the passing of a decree of judicial separation, in a proceeding to which they were parties. It is not the case of the respondent that within one year of the decree of dissolution of marriage, there was resumption of cohabitation between the parties. Obviously, the appellant is in United Kingdom and the respondent is in Karnataka. Therefore, the appeal deserves to be allowed, especially in the light of the facts – (i) that the respondent/wife is not aggrieved by the decree of judicial separation and (ii) that the wife does not plead that there was resumption of cohabitation within one year of the decree of judicial separation.

9. Therefore, in the light of the above, the appeal is allowed and the judgment and decree of the Family Court are modified and a decree of dissolution of marriage is granted in

terms of Section 13(1A)(i) of the Hindu Marriage Act, 1955.

Pending applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

01st November, 2018.

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Family Court Appeal No.174 of 2017
(per VRS, J.)



01st November, 2018.
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