

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE T. AMARNATH GOUD

F.C.A.No. 259 of 2017

JUDGMENT:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This appeal is preferred against the order dated 12.04.2017 in F.C.O.P.No. 325 of 2014 passed by the Judge, Family Court-cum-XII Additional District Judge, Guntur whereby the petition filed by the appellant – wife under Section 13(1)(ia) and (ib) of Hindu Marriage Act, 1955 (for brevity “the Act”) seeking dissolution of the marriage, has been dismissed.

While the appellant belongs to Guntur town, the respondent hails from Ponnur, a small village in the Guntur District and their marriage took place on 14.03.2007. They have no child out of their wed-lock. The family problem started between the appellant and the respondent in the month of May, 2008 when she went to Bombay along with her parents to attend house-warming ceremony of her younger sister.

The case of the appellant is that after attending the ceremony, she remained at Bombay for sometime with her parents, and when they returned to Guntur, she received a message from the respondent-husband that till mediators come and talk on the issue, she would not come to his house.

Accordingly, mediation took place wherein the respondent stated that the appellant is not caring about the tradition of their family, therefore, she is not fit for conjugal life, thereby, he did not allow her to go to his house at Ponnur to lead conjugal life.

The case of the respondent as averred in his counter affidavit filed in F.C.O.P.No. 325 of 2014 is that the appellant who belongs to a big town like Guntur, seemed to have not adjusted herself with the atmosphere at Ponnur where the respondent resides with his parents. In a traditional family like that of the respondent, the appellant was asked to move out in a dignified and respectable manner covering shoulders and upper portion of her saree and also in her conversation with neighbours who are more interested in fishing out the internal family details with a view to comment against or heckle in the respondent's family. The appellant, being an educated woman, instead of reconciling with the advice in a positive manner, seemed to have developed the feeling that her liberty is being curtailed and taken away by the respondent and his people.

After considering the rival contentions of the parties, the learned trial Court came to the conclusion that there is no desertion on the part of the respondent at any point of time and it is only the appellant who is guilty of not leading

matrimonial life with the respondent at Ponnur, particularly when she had no employment. Even then, the respondent is prepared to lead conjugal life with the appellant, wherever she works in the Banking sector, if she changes her attitude as a dutiful Hindu wife towards him and his parents.

It is not in dispute that the marriage took place between the appellant and the respondent on 14.03.2007 and no child is born out of their wed-lock. This Court, before hearing this matter has interacted with the parties. The respondent has stated that he is ready to live with the appellant, but the appellant stated that there is no chance of living together as there has been no matrimonial life since May, 2008. She has further stated that she does not want any permanent alimony or maintenance even in future, however she wants divorce from the respondent.

It is also not in dispute that the respondent did Post-Graduation in Economics and is running Kirana shop at Ponnur whereas the appellant studied B.Sc. B.Ed. and is working as Clerk in Bank of India in Guntur. The distance between Ponnur and Guntur is approximately 50 kilometers, but the fact remains that due to misunderstanding, lack of trust and incompatibility, the appellant and the respondent have been staying separately since May, 2008. Moreover, in spite of the fact that mediation took place between the

appellant and the respondent there has been no re-union. Having counselled the parties, this Court has found that there is no possibility of settlement of dispute between them.

In the counter filed by the respondent before the trial Court, it is averred that the appellant hails from a big town like Guntur and she seemed to have not adjusted herself with the atmosphere at Ponnur. In a traditional family like that of the respondent, the appellant was asked to move out in a dignified and respectable manner covering her shoulders and upper portion of her saree and also in her conversation with neighbours who are more interested in fishing out the internal family details with a view to comment against or heckle the respondent's family.

We are in the era of 21st century. The appellant has acquired qualification in B.Sc.B.Ed. and is working in Bank of India. The respondent is also a Post-Graduate in Economics, however not working anywhere but running a Grocery shop at native place, Ponnur. Both the parties studied in their respective colleges and there is no general rule or regulation or tradition that in what manner the students have to behave themselves and which clothes they have to wear in the college and how they have to behave in the society. It is not in dispute that in every college institution and the society there is discipline and that has to be maintained by each and every

one, failing which, he or she will face consequences. In the present case, the appellant belongs to a city and the respondent hails from a village and working there only. Due to non-exposure to the present modern world, the respondent has been insisting on the appellant to follow traditions of the family to maintain dignity and respectability in the society by covering her shoulders and upper portion of her saree.

An educated male or female, who studied in college and is working in a Public Sector Bank, is very well aware in what manner he or she has to dress up and move in the society. After the marriage, the husband is a bridge between his family members and his wife. If the bridge is strong, the marriage affairs run smoothly but if the bridge is weak it comes down and the situation becomes worse as in the present case. The respondent is a Post-Graduate and the appellant has completed B.Sc.B.Ed. and is having a respectable position in the society by way of working in Public Sector Banking Service, therefore, the respondent should have provided comforts and good atmosphere at his residence. But, it appears, this is lacking. If an educated person moves freely in the society, it means he or she is going in the right direction, otherwise the life is at stake.

In view of the disputes between the appellant and the respondent, there seems to be no much issue, therefore, this

Court also tried to pacify their issue and find out possibility of reuniting the parties but the appellant is determined not to live with the respondent at any cost. Though the case of the respondent is that the appellant herself deserted him in the month of May, 2008 and thereafter never turned up to his house at Ponnur. But the fact, which is not denied by the respondent, remains that he never filed any petition under Section 9 of the Act for restitution of conjugal life. It is also not on record that the respondent visited the house of the appellant at any time and asked her to come to his place to lead matrimonial life.

Since the appellant and the respondent have not been staying together since May, 2008, this period of separation itself indicates desertion which attracts the provision contemplated under Section 13(1)(i)(ib) of the Hindu Marriage Act, 1955 which is reproduced hereunder:

“Divorce:- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or”.

The above provision clearly depicts that if the respondent deserted the appellant for a continuous period of not less than two years immediately preceding the presentation of the

petition, then the marriage can be dissolved on the ground of desertion.

PW2, the mother of the appellant, specifically deposed that in the month of May, 2008, when they went to Bombay along with the appellant to attend house-warming ceremony and stayed there for sometime, they came to know about the cruel treatment of the respondent towards the appellant. After returning from Bombay, her daughter was not allowed to join the respondent, and he deserted her without any tenable reason. On 22.06.2008, mediation took place at their house, and due to the attitude of the respondent, all mediations ended in vain and he openly proclaimed during the negotiations that he would not continue his marital life with the appellant.

In view of the depositions of the appellant and PW2 and the averments made in the counter affidavit filed by the respondent, it is evident that neither the respondent filed petition under Section 9 of the Act for restitution of conjugal life nor efforts whatsoever were made by him to live with the appellant.

For the foregoing reasons, there seems to be no chance at all for the parties to live together and lead marital life peacefully, therefore, we hereby dissolve the marriage of the appellant and the respondent solemnized on 14.03.2007.

It is made clear, as assured by the appellant that she will not claim either any amount towards permanent alimony or maintenance in future from the respondent.

Accordingly, the appeal is allowed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

04.10.2018

T. AMARNATH GOUD, J

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