

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CIVIL MISCELLANEOUS APPEAL No. 316 of 2006

JUDGMENT:

Assailing the judgment in O.P.No. 57 of 2001 on the file of the Senior Civil Judge, Peddapalli, wherein a petition filed under Section 13(i)(ia)(ib) of the Hindu Marriage Act seeking dissolution of marriage between the petitioner and respondent, was dismissed, the present appeal came to be filed by the petitioner/ appellant.

2. For the sake of convenience, the parties will hereinafter be referred to, as arrayed in the O.P. The petitioner is the legally wedded husband of the respondent and their marriage took place on 27.03.1998 and was consummated. Out of wedlock, they were blessed with two children. The petitioner contends that the respondent was in the habit of frequently leaving the society of the petitioner, causing great inconvenience and mental agony. Though the elders advised the respondent not to leave the company of the petitioner frequently, she did not oblige the same. The petitioner, therefore, contends that he was subjected to cruelty and harassment in the hands of the respondent and that the respondent's father also used to quarrel with him on petty issues.

3. The petitioner contends that on his transfer to Godavarikhani on 16.05.1991, he had taken a house on lease in Shanthinagar locality and shifted his family from Medaram. On 22.02.1992, again, the respondent left his society along with the children, without informing him. The petitioner contends that he has developed great love and affection towards his children and in spite of his best efforts, the respondent refused to join his society, stating that unless his mother is sent out of his house, she will not join his society. It is further contended that the respondent has voluntarily deserted the society of the petitioner at the instance of her father, for no valid reasons, and on this ground, the petitioner is entitled for dissolution of his marriage with the respondent.

4. A counter came to be filed denying the averments made in the application filed by the petitioner, contending that the mother of the petitioner never lived with the petitioner and the respondent at any time, and therefore, the question of respondent asking the petitioner to send his mother out of the house, does not arise. The respondent contends that the petitioner exhibited cruelty towards her by not allowing her parents to take her to their house, and also beat her very frequently on one reason or the other. She further contends that the petitioner is habituated to consuming liquor, mutka etc., and that he sent her out of the house several times. The respondent further contends that the petitioner necked her along with her minor children out of his house in the year 1992, demanding a sum of Rs.1,00,000/- towards additional dowry. The contention of the respondent is that she did

not leave the society of the petitioner on her own accord at any time, and though she went to the house of the petitioner in the year 1992, on the advice of her parents, the petitioner did not allow her to stay with him.

5. During the course of trial, the petitioner got himself examined as PW1, and also examined one independent witness as PW2. In support of oral evidence, the petitioner got marked Ex.A-

1. The respondent got herself examined as RW1 and another independent witness was examined as RW2. Ex.R-2 to R-4 came to be marked. After hearing both sides and after taking into consideration the evidence on record, the trial court dismissed the O.P. filed by the petitioner for dissolution of marriage.

6. The point that arises for consideration is whether the order passed by the trial court in dismissing the petition filed by the petitioner under Section 13(i)(ia)(ib) of the Hindu Marriage Act seeking dissolution of marriage, warrants interference.

7. The main ground urged by the learned counsel for the petitioner is that the respondent meted out cruelty towards the petitioner by frequently leaving his society. In other words, the fact of respondent deserting the petitioner on her own is sufficient to grant divorce.

8. On the other hand, the learned counsel for the respondent would contend that the respondent never left the society of the petitioner on her own accord, and it was the petitioner who

necked out the respondent from his house, and that the respondent was always willing to join the society of the petitioner.

9. In order to appreciate the dispute between both parties, it would be useful to refer to the evidence of the witnesses, which is as follows:

10. In the cross-examination, PW1 admitted that he has mentioned in his petition that the respondent left his society without informing him and except this ground, he has no other ground for divorce. He further admitted that the respondent filed maintenance case against him and that he filed a petition for restitution of conjugal rights, but, the same was dismissed for default and he had not taken any steps for restoration of the same. He also admits that before issuance of the legal notice Ex.R-1, a panchayath was held in the presence of Naini Odelu, Ajay Basha, Venkateshwarlu of Godavarikhani, but, none of these persons were examined as witnesses on behalf of the petitioner. The petitioner denied the allegation that he was addicted to bad vices and in the absence of the respondent, he kept one mistress and killed her and that a criminal case under Section 302 IPC is pending against him for the said offence.

11. PW2 is an independent witness. His evidence is to the effect that several times, the respondent left the society of the petitioner and her father also took her away without informing the petitioner, and since the last 14 years, she is not living with the petitioner.

12. The respondent-RW1 clearly admitted in her cross-examination that since 1992, she is not living with the petitioner and is living separately. The suggestion that at the instance of her parents, she voluntarily left the society of the petitioner and that there was no demand for additional dowry by the petitioner, was denied.

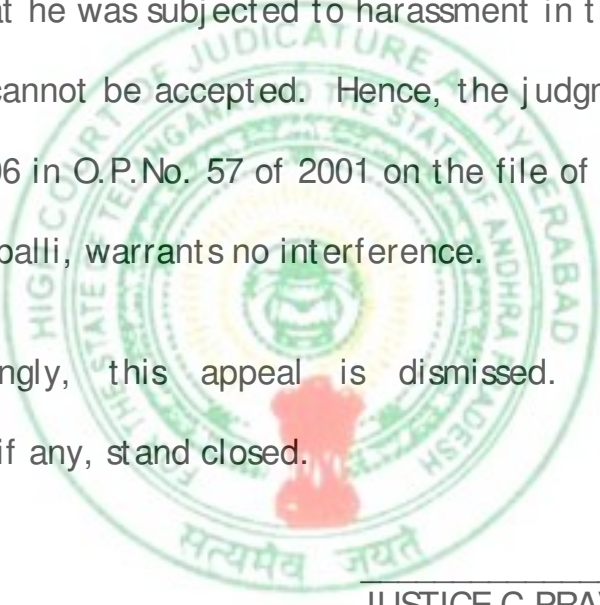
13. RW2, who is the neighbour of the respondent deposed that she did not witness the incident which occurred in the house of the petitioner and respondent, but, she was informed by the respondent about the cruelty meted out to her by the petitioner.

14. A perusal of the record would show that the only ground on which the petitioner has filed the petition for divorce is that the respondent is frequently leaving his company, thereby subjecting him to humiliation and mental agony. Except stating so, the petitioner has not stated about the cruelty meted out to him by the respondent in any other form. In fact, it is admitted even by the respondent that she was living with her parents since 1992 and all her efforts to join the petitioner proved futile, since the petitioner refused to take her back. The material on record also shows that when the respondent deserted the petitioner, he filed a petition for restitution of conjugal rights, but, the said petition was dismissed for default and the petitioner has not taken any steps for restoration of the same. Thus, it is clear that the petitioner and respondent are living separately since 1992, only on account of the conduct of the petitioner.

15. Therefore, the material on record shows that no evidence was adduced by the petitioner to show that he suffered harassment in the hands of the respondent. Except the self-serving statement of the petitioner, about the cruelty meted out towards him on account of the respondent leaving his company frequently, there is no other evidence on record to show that the respondent exhibited cruelty towards the petitioner.

16. Having regard to the above, we feel that the plea of the petitioner that he was subjected to harassment in the hands of the respondent, cannot be accepted. Hence, the judgment dated 15th February, 2006 in O.P.No. 57 of 2001 on the file of the Senior Civil Judge, Peddapalli, warrants no interference.

17. Accordingly, this appeal is dismissed. Miscellaneous applications, if any, stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

09.03.2018
DMG