THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

C.M.A.NO. 493 of 2007

JUDGMENT: (Per Hon'ble Mr. Justice C. Praveen Kumar)

1. The present appeal came to be filed under Section 28 of the Hindu Marriage Act, 1955, aggrieved by the order dated 21.3.2007 passed in O.P.No. 22 of 2005 on the file of the Senior Civil Judge, Nizamabad wherein an application filed by the appellant/husband seeking for dissolution of the marriage with the respondent/wife was rejected. The parties will hereinafter referred to as they are arrayed in the petition filed before the trial Court.

2. The facts stated in the petition for dissolution of marriage are as follows,

The petitioner's marriage with the respondent was performed on 23.12.1996 at Nallavelli as per Hindu rights and customs and out of wedlock they were blessed with male child on 1.2.1998 and female twins on 20.8.2000. It is said that after the birth of the male child, the respondent stayed with the petitioner for six months and went away to her maternal home leaving the male child at the house of the petitioner. One year thereafter, the respondent joined the company of the petitioner with the intervention of elders. However the respondent subjected the petitioner to mental torture and harassment during which period, the twins by name Sruthi and Srujana were born to them and

finally in the year 2001, she permanently left the house of the petitioner leaving behind the children without reasonable and valid grounds. Since then she is said to be residing at her maternal home. The petitioner issued legal notice which was returned 'unserved'. Hence the petition for dissolution of marriage was filed on the ground of cruelty and desertion.

3. The respondent filed counter in which she denied the averments made in the petition and on the other hand, she stated that the petitioner himself harassed her mentally and physically at the instigation and advice of his parents to bring additional dowry. She also alleged that the petitioner used to come to the house in late hours in drunken condition and beat her mercilessly. In spite of the elders' advice, the petitioner did not change his attitude. Ultimately in the month of March, 2004 the petitioner beat the respondent black and blue, necked her out of his house at Nallavelli and threatened her not to come back without getting additional dowry. The petitioner did not allow the respondent to take away the children. The petitioner was cruel towards her and adamant in nature treating the respondent mercilessly.

4. In support of his case, the petitioner examined himself as P.W.1 and got marked Exs.A1 to A3, which are the office copy of legal notice, postal receipt and unserved legal notice. The respondent

examined himself as R.W.1 and no document was marked on her behalf.

5. After hearing both sides and on considering the evidence adduced by the parties, the trial Court rejected the plea of the petitioner. Aggrieved by the same, the present appeal came to be filed.

6. Despite service of notice, there is no representation on behalf of the respondent.

7. Learned counsel for the petitioner/appellant submits that the respondent on her own left the matrimonial home without any justifiable reason without taking care of her children and her conduct itself amounts to cruelty. His further plea is that the respondent wilfully deserted him by leaving the matrimonial life and has been living separately since 2001 and on these grounds pleads grant of divorce.

8. The point for consideration is,

Whether the respondent was cruel to the petitioner and whether the respondent wilfully deserted the petitioner, two years prior to filing of the divorce petition?

9. In matrimonial cases pleas are required to be specific and the evidence on the pleadings is required to be taken into consideration.

10. In evidence in-chief, P.W.1 deposed that after the birth of first child, the respondent joined him at the instance of the elders and stayed with him for one year subjecting him to mental torture and

harassment and in the year 2000 they were blessed with twins. He further deposed that the respondent deserted him four years back and staying with her mother without any valid reasons and his efforts to bring back her did not yield any fruitful results. He relied on Exs.A1 to A3 in support of his plea.

11. The respondent who was examined as R.W.1 denied the allegations made against her. In her evidence she deposed stating that the petitioner used to come home late in a drunken condition, beat her mercilessly and also used to demand her to get additional dowry. Finally in the month of March, 2004 he necked her out from his house at Nallavelli to bring additional dowry and since then she was staying at the house of her maternal uncle at Bheemgal.

12. As seen from the above evidence, except the self-serving testimony of P.W.1 and R.W.1, there is no other evidence produced by them in support of their contentions. Both the witnesses speak about the mediation by the elders, but none of them examined the mediators in support of the mediation between the couple. The application for divorce was filed in the year 2005. R.W.1 admits in her evidence that since March, 2004 she was staying in Bheemgal and she left the house of the petitioner when the twins were aged about 4 years who were born to her on 10.8.2000. The evidence of R.W.1 in-chief would clearly indicate that she left the house of the petitioner when the twins were at the age of 4 years. She denied the suggestion

that she left the company of the petitioner in the year 2000. P.W.1 denied a suggestion that his wife lived with him till March, 2004. Except the oral testimony of P.W.1 that the respondent deserted him about four years back, there is no other evidence to corroborate the same. From the material it emerges out that the respondent left the house of the petitioner when the twins were at the age of 4 years. Mere separation between the spouses for a long time does not amount to desertion as contemplated under the provision of the Hindu Marriage Act. There has to be intention on the part of the deserting spouse to permanently break the matrimonial alliance. As already stated above, there is no evidence produced by the petitioner/appellant that the respondent ever wanted to break matrimonial alliance. Thus the desertion as pleaded by the petitioner as contemplated under law stands unproved.

13. In so far as the allegation of cruelty, the evidence of P.W.1 is to the effect that he was subjected to mental torture and harassment by the respondent and thereafter she left him leaving the twins without any valid and justifiable reasons. The evidence of P.W.1 discloses that the respondent used to go to the house of her maternal home without intimation to anybody and the compromise through elders also failed. On the other hand, the evidence of R.W.1 is to the effect that she was subjected to cruelty for additional dowry. However, in the cross-examination she admits that she does not know the contents of the

chief-examination. Therefore, the averments in the counter of the respondent that she was subjected to cruelty for additional dowry is not supported by any independent evidence. As per the evidence of P.W.1, the respondent used to run away to her maternal home without any intimation and continued to stay there leaving the twins who were at tender age. It is the evidence of P.W.1 that the respondent neglected the children leaving them at their fate and he never lead a peaceful life with her. Even in the notice under Ex.A1 similar allegations were made against the respondent. From the evidence of P.W.1 and R.W.1 it appears that the respondent never attended to her matrimonial duties more particularly with regard to taking care of her children. The question therefore that arises for consideration is whether such act of the respondent amounts to cruelty to get the relief of divorce.

14. Since the allegations of harassment and demand of dowry remained unproved, there lies the question as to the 'cruelty' pleaded by the petitioner. The word 'cruelty' is not defined any where in the Act. In ***Ramchander Vs. Ananta*** [1] the Apex Court held as under:

> "The expression 'cruelty' has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the

[1] (2015) 11 SCC 539

> present case there is no allegation of physical cruelty alleged by the Plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the Plaintiff has been subjected to mental cruelty due to conduct of the other spouse."

15. The main allegation of the petitioner so as to constitute a ground of cruelty is that the respondent was staying in the house of her maternal uncle at Bheemgal without caring for the children and that she was leading adulterous life. But no evidence has been placed on record to prove such allegation. It is not even the case of the petitioner that he was subjected to physical assault. Of course it is not necessary to prove actual assault so as to establish cruelty. Even mental cruelty which would render harmful or injurious for the petitioner to live with the respondent or is of such a nature so as to create a reasonable apprehension to that effect would amount to cruelty. As observed earlier, allegations of cruelty as pleaded have not been established. There was neither any plea nor any evidence that the acts of the respondent ever endangered health, limb or life of her husband. In this case, the acts of the respondent would show that she used to leave the company of the petitioner and stay in her maternal

home and that she was not taking care of her children and such acts of the respondents, in our opinion, would not amount to cruelty. Therefore, we hold that the petitioner/appellant has not been able to prove cruelty as required under law.

16. Accordingly the appeal is dismissed. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

C.PRAVEEN KUMAR, J

Dt. 1.2.2018
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J. UMA DEVI, J