

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CIVIL MISCELLANEOUS APPEAL No.1065 of 2005

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

Assailing the order in OP.No.124 of 2000 dated 13.09.2005 on the file of the Senior Civil Judge, Anakapalli wherein the application filed under Section 13(1)(b) of the Hindu Marriage Act (for short 'the Act') for divorce was dismissed, the present appeal is preferred under Section 28 of the Act by the appellant/petitioner.

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed in the original petition. The facts, as put forth by the petitioner in the original petition filed in the Court below, are briefly as follows:

The marriage of the petitioner was performed with the respondent in the year 1982 at Sankaramatham, Visakhapatnam as per Hindu rites. Out of their wedlock, they were blessed with two daughters. After marriage, the parties lived at Tenali for about 14 years and thereafter, shifted to Anakapalli. It is stated that the respondent harassed the petitioner mentally and physically from the beginning of their marriage. As he was addicted to bad vices, used to abuse the petitioner as well as his daughters in vulgar language apart from beating her without any reason. It is stated that since the mental condition of the respondent was not good, he was given Homeo treatment. It is further stated that the respondent was involved in criminal case and as such, arrested in the year 1996. It is stated that the petitioner deposited an amount of Rs.15,000/- in the name of the

respondent in the year 1990, which got matured in the year 1995 for Rs.30,000/-, which was spent by the respondent for his bad vices. It is stated that the respondent forcibly snatched a gold chain weighing 5 tulas from the petitioner and left the house deserting the petitioner and her daughters. Since the respondent deserted the petitioner and her daughters, the aforesaid OP came to be filed seeking divorce.

The respondent filed counter denying the averments made against him with regard to bad vices and harassment. It is stated that at the time of marriage, he was unemployed and after marriage, on the advice of one Ekkirala Krishnamacharya, he shifted his abode from Anakapalli to Pervalipalem and started an elementary school, in a rented building and earned huge profits in the business. It is said that though the petitioner studied only matriculation, she assisted him in running the school and used to give all his earnings to the petitioner and used to deposit amounts in the joint names of himself and the petitioner. It is said that one Padarthi Srinivasa Rao of Tenali developed intimacy with the petitioner and poisoned her mind to capture all the amounts earned by him and withdraw the amounts lying in the joint account. With such malafide intention, the petitioner asked him to shift the resident to Anakapalli to establish business and that she would join him after the business is developed. It is said that in the year 1996, the petitioner came to Anakapalli and joined him and later in the year 1997, he started an Elementary English Medium school at Anakapalli in a rented house and with his earnings, he purchased a flat in the name of the petitioner. It is said while the respondent was busy maintaining school, his earnings were handled by

the petitioner. He also purchased 40 tolas of gold and silver articles weighing about 2 Kgs which are in the custody of the petitioner. It is said that taking advantage of the situation that the immovable property was purchased in her name; the deposits were also made in her name and the gold and silver articles are in her custody, the petitioner filed the petition with false allegations. It is said that he never harassed and it is the petitioner, who colluded with her daughters and harassed the respondent with an intention to grab the properties. It is also said that the respondent filed O.S.No.31 of 2001 seeking partition of the properties.

Basing on the above averments, the issue which fell for consideration before the trial Court was whether the petitioner is entitled to seek divorce on the grounds of 'desertion' and 'cruelty'.

In support of her case, petitioner examined herself as P.Ws.1 to 3 and got marked Ex.A1. On behalf of respondent, R.Ws.1 to 4 were examined and Exs.B1 to B3 were marked. Considering the oral and documentary evidence, the trial Court rejected the request of the petitioner for dissolution of marriage. Challenging the same, the present appeal came to be preferred.

3. The fact that the petitioner and the respondent are living separately since last 18 years is not in dispute. In fact, both the counsel expressed their inability to contact their clients. Having regard to the lapse of time and since the petitioner and respondent have been living separately since last 18 years, this Court feels that there is no possibility of reunion of parties.

4. Situation somewhat identical to the case on hand came up for consideration before a Division Bench of this Court in *KALAPATAPU LAKSHMI BHARATI v. KALAPATAPU SAI KUMAR*¹. In the said case, the parties had been living separately for 14 years and there was no possibility of them living together again. It was also a case where the marriage was irretrievably broken down. In view of the judgments of the Supreme Court in *SAMAR GHOSH v. JAYA GHOSH* [2007 (4) ALD 11 (SC)] and *KOHLI V. NEELU KOHLI* [(2006) 4 SCC 558] the Division Bench held that long time separation itself would lead to mental cruelty. It would be relevant to extract the relevant para of the aforesaid decisions as under:

“11. In the light of the undisputed fact that the parties have been living separately for nearly 14 years, there may be no escape from the conclusion that the marriage has irretrievably broken down. As held by the Supreme Court, a long time separation itself would lead to mental cruelty. Therefore, irrespective of the findings of the lower Court on the failure of the appellant to prove mental cruelty, she is entitled to a decree for dissolution of marriage on the sole reason that there is not possible for reunion of the parties in order to live together. Since the marriage between the parties 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.”

5. We feel that the case on hand is identical to the one referred to above. Admittedly both parties are living separately since last 18 years or more. In view of the judgments of the Supreme Court, which was also followed by another Division Bench of this court in

¹ 2017 (1) ALD 272 (DB)

KALAPATAPU LAKSHMI BHARATI's case (1 supra), long separation for more than 18 years would lead to mental cruelty, irrespective of the finding of the Court below. It was also held by the Supreme Court that any effort made to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties. Hence, we feel that the appellant is entitled to dissolution of marriage for the reason that there is no possibility for reunion of the parties in order to live together due to mental cruelty.

6. Hence, having regard to the observations made and the findings arrived at, we feel that the appellant is entitled to a decree for dissolution of marriage and the marriage between the appellant-petitioner and the respondent shall stand dissolved.

In the result, the civil miscellaneous appeal is allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

C. PRAVEEN KUMAR, J

T. RAJANI, J

July 5, 2018
DSK