

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CIVIL MISCELLANEOUS APPEAL No.267 of 2006

JUDGMENT: (per Hon'ble Smt Justice T. Rajani)

Assailing the order of the Principal Senior Civil Judge in OP.No.152 of 2004 dated 21.01.2006 the appellant-respondent preferred the present appeal under Section 28 of the Hindu Marriage Act (for short 'the Act'). The petition in which the impugned order is passed is filed under Section 9 of the Act by the petitioner therein, who is the husband of the appellant herein, seeking restitution of conjugal rights.

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 petitioner got married to the respondent on 03.03.2002, which was an arranged marriage, settled in a hurry, without knowing details about the respondent's family, as the petitioner's father was seriously ill and undergoing heart surgery and as he desired to perform the marriage, before he underwent surgery and as the petitioner was the youngest son. The marriage was hence performed in a simple manner, without following customary rituals. After marriage, the marriage was consummated. The family of the petitioner consists of the petitioner and his old aged parents. The respondent was given utmost care and comfort with an

independent bed room along with T.V., tape recorder and a servant to assist her. The respondent used to go to movies, parties, hotels, attending functions etc. Initially, for two months, they lead happy life. All of a sudden, the respondent started behaving in an abnormal way with a typical attitude. She used to spend time in her bed room, as if she was sleeping and never used to have lunch and dinner in time. Whenever they went to enquire about her abnormal behaviour, she used to shout on them stating that it is her life. Petitioner and his parent were shocked with such behaviour. Her behaviour had been aggravating from day to day.

During April, 2003, the petitioner took the respondent to attend one of his friend's marriage at Rajahmundry and after attending the marriage, he took return ticket via Kakinada to Hyderabad and since the train departure was in the evening, he took her to one of his relatives house, to take rest. While the petitioner was taking nap, the respondent, without informing him, left to her parents place and immediately, the mother of the respondent came to the said place where the petitioner was waiting for his wife and picked up a quarrel stating that her daughter was not taken care of by him and his parents and stated that she will not send her daughter until the petitioner comes to their house along with his parents. The petitioner was shocked. The parents of the petitioner tried to enquire into the matter over phone, as the petitioner's father underwent surgery, but there was no positive response over phone. Instead, one of the respondent's brother called to the mediator's house over phone and abused them in a filthy language. After almost one month of May 2002,

the respondent's elder brother brought the respondent to the petitioner's place and apologized for the mistakes committed by her and requested him to accept her, by forgetting the past unexpected events, for which, the petitioner and his parents unconditionally accepted her, in the interest of petitioner's happy matrimonial life, hoping that the respondent would realize her misdeeds. But the respondent did not change her old attitude and started behaving in the same manner and she went back to her mother's place, stating that it is Aashadamasam and stayed up to last week of August 2002.

The petitioner further avers that in August 2002 the respondent got conceived. The petitioner's mother used to take care of the respondent and in the seventh month of pregnancy, on 19.03.2003, the respondent's younger brother alone came and requested to send her. The respondent, while going, took all her gold jewellery and sarees, stating that Srimantham has to be performed at her parents' house. On 23.03.2003, the petitioner telephoned to the respondent to know about her health, but she replied adamantly. On 28.05.2003, they received a letter, which was sent by the respondent, stating that the respondent delivered a male baby, but they did not call them and intimate the same. The petitioner immediately called her and enquired about her health but her younger brother lifted the phone and threatened, saying that if he dares to visit Kakinada, they will see his end. The petitioner was stopped by his parents from going to Kakinada, as they saw a threat. He made efforts to bring the respondent but in vain. The parents expressed that the respondent is

not a burden to them and that they will take care of both of them. The mother of the respondent made false allegations against the petitioner that he is a HIV patient and he is not fit for matrimonial life and hence, they will not send the respondent.

On 06.03.2004 some persons from Kakinada telephoned him and stated that they are calling from II Town Police Station and that he is required in family counselling centre, as the respondent filed a complaint against him. Knowing about the same, the father of the petitioner suddenly collapsed and got hospitalized in a critical condition. The petitioner could not attend the counselling as his father was not well. On 11.03.2004 the petitioner received a legal notice containing baseless allegations. She did not mention her willingness in the said notice to join the petitioner. Instead she demanded Rs.4,000/- per month as maintenance. The petitioner is deprived of his marital happiness, as the respondent left his company without any reasonable excuse.

The respondent filed counter, denying the averments made in the petition and stating that if the petitioner really had love and affection towards her and her child, he ought to have come down to see the child and that no wife would blame her husband that he is a HIV patient. She filed maintenance case and maintenance was granted to her. The petitioner himself neglected her child and left them to their fate.

The Court below examined P.W.1, the petitioner and R.W.1, the respondent and there is no evidence apart from that of the

petitioner and the respondent themselves. Considering the evidence, it allowed the petition, granting a decree of restitution of conjugal rights.

3. Challenging the same, the present appeal came to be preferred on the grounds that the Court below failed to appreciate that the appellant was subjected to constant beating since her marriage and it ought not to have observed that the appellant failed to prove the allegation of beating by the respondent and that the Court below failed to appreciate that the present OP filed by the respondent is a counter blast to the maintenance case filed by the appellant.

4. This is a case of oath against oath. Hence, the truth or otherwise has to be gathered only from the testimonies of the respective parties. The fact that the respondent is staying away from the petitioner is admitted and the fact that she filed a maintenance case is also admitted. The observation of the Court below that the respondent failed to prove the allegations made against the petitioner has to be upheld in the light of her testimony. The allegations made against each other are of equal weight. But what stands to be proved is that the respondent filed a case against the petitioner for the offence under Section 498-A IPC and she left his company and filed a maintenance case. In the cross-examination, she stated that she is not willing to go the petitioner, but explains that it is due to the beating by the petitioner. But she did not examine anyone in support of the said fact, not even her parents. The burden is more on the respondent to prove the reasons for her staying away from the petitioner. The failure of the petitioner to prove his allegations would not be fatal, since he is

only seeking restitution of conjugal rights. It is for the respondent to justify her stay in her parents' house by proving the circumstances, which forced her to leave her matrimonial house, which she failed to. Hence, in the above circumstances, it has to be concluded that the respondent left the company of the petitioner without any reasonable cause and hence, the order of the Court below granting restitution of conjugal rights in favour of the petitioner needs no interference.

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

July 12, 2018
DSK



C. PRAVEEN KUMAR, J

T. RAJANI, J