

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HONOURABLE SMT. JUSTICE T. RAJANI

C.M.A.No.306 OF 2006

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

1) Aggrieved by the order and decree dated 20.02.2006, passed in O.P.No.21 of 2004 on the file of the Senior Civil Judge, Proddatur, wherein an application filed by the husband under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights, was allowed, the present appeal came to be filed by the wife.

2) The averments in the O.P. are as under:

The respondent-husband filed O.P.No.21 of 2004 seeking restitution of conjugal rights. The gist of the averments in the petition filed would show that the marriage of the respondent with the petitioner was performed in the year 1993 at Tirumala. The petitioner, who is the wife of the respondent, was deaf and dumb and she was none other than the daughter of the paternal aunt of the respondent. After marriage both of them lived happily for some time and out of wedlock they blessed with one daughter by name Geethika, who was aged about five years then but now doing her engineering. The father of the petitioner/ wife by name M.Eswar Reddy, who was a partner in the management of Everest Lodge situated in Mydukur road, Proddatur, had some differences with one Chinna Obul Reddy, who is the elder step son of the petitioner. On account of the disputes the father of the petitioner filed O.S.No.106 of 2000 against Chinna Obul Reddy and his wife G.Bayamma. The request to grant temporary injunction was dismissed and subsequently the suit itself was also

dismissed. It is alleged that since then the father of the appellant herein developed a grouse against the respondent-husband and that it was he, who is not allowing the appellant and respondent to live together. It is said that the efforts made by the husband to look after his child proved futile. It is stated that he was not even allowed to talk with his daughter. Legal notice came to be issued on 22.04.2004 requesting the appellant to join the respondent to lead matrimonial life, but the said notice was returned as door locked. Since the entire issue was due to the interference by the father of the appellant, the respondent pleads issuance of order for restitution of conjugal rights.

3) A counter came to be filed by the wife disputing the averments made in the petition except to the extent of marriage and birth of the child. It is the case of the respondent that at the time of marriage her parents provided an amount of Rs.2,00,000/- and 20 tolas gold to him. For the last three years, her husband at the instance of his sister-in-law Bayamma and his step brother harassed the appellant and used to beat her occasionally. As such the father of the petitioner brought her to his house and since three years she is residing with his father at Proddatur. The wife also filed a complaint against the husband and his family members for the offence punishable under Section 498-A IPC. It is stated in the counter that the husband got married to another woman and living with him. As the appellant is deaf and dumb, is not in a position to live with her husband and that her life would be at stake in the house of her husband.

4) In support of its case, the husband examined PWs.1 and 2 and got marked Exs.A1 to A6, while the father of the wife was examined as RW.1.

5) After considering the evidence available on record, the Court below allowed the O.P. Challenging the same, the present appeal came to be filed by the wife/ appellant.

6) At the time of hearing of the matter, this Court with an intention to settle the dispute amicably, directed the father and child of the appellant to be present before the Court. The appellant did not appear before this Court as she is not able to move from the house due to joint pains and other ailments. The daughter of the appellant and respondent-husband appeared before us in the chambers. On examination, the daughter, who is now pursuing engineering course stated that to her remembrance she never had any communication with her father at any time and that her father never shared any love and affection by sending gifts or money till date. She categorically stated that her father has re-married and is having two school going children. She cries and pleads that she may not be sent to her father and in case if she is sent, her entire education which is at a crucial turn would get spoiled. Sister of the appellant, who also came to the Court, when examined, stated that her sister, who is deaf and dumb is un-well, suffering from many ailments as such she would not come to the Court. She along with the daughter of the appellant categorically stated that they are not interested for any money or property and would be happy if both of them are left alone. It is further stated that without any consideration and share in the property, the appellant is willing to give divorce as they are not in touch with each other since last 18 years.

7) On the other hand, the husband, who was examined separately, stated that though every effort was made by him to take back his wife

and child was thwarted by his father-in-law, left with no other option he kept quiet. According to him, since his father-in-law lost in the suit, he developed a grouse and did not send his wife and child to him. He wants his wife, who is deaf and dumb and that he does not want any property of his wife. However, he admits that he has neither sent any money nor gifts to his daughter till date. When suggested about his re-marriage, he denied the same. In Court, the counsel was informed as to what conversation in the chambers and he was also asked to find out whether the husband is willing to give divorce without any conditions. The counsel took time and reported back before the Court stating that his client is not willing to give divorce and that he wants his wife and child only.

8) Having regard to the above, it is to be seen whether it would be just and proper to sustain the order passed in favour of the husband under Section 9 of the Hindu Marriage Act?

9) The finding of the trial Court would show that a case in Crime No.72 of 2003 of Proddatur III Town Police Station came to be registered for the offence punishable under Section 498-A IPC against the husband, alleging that the husband and his family members beat his wife and treated her cruelly. Without discussing as to the nature of allegations made and also as to what happened to the said crime and in the absence of any allegation of bigamy, the trial Court rejected the plea of the wife that her husband had re-married, took this as one of the ground in ordering restitution of conjugal right. But fact remains that there was a case registered for the offence punishable under Section 498-A IPC, but there is no material on record to show as to whether the said allegations are proved. This crime was

registered in the year 2003, thereafter the present O.P. came to be filed seeking restitution of conjugal rights.

10) As stated earlier, the grievance of the husband is against his father-in-law, who lost the suit for injunction filed against the step-brother of the respondent and since then differences arose between them. There is no dispute that the husband and wife are living separately since last 18 years.

11) The material on record shows that the father of the appellant brought her back to his house three years prior to filing of the O.P. and since then she has been living with her father along with the child. From the above, it appears that since 2003 both the parties are living separately and no effort was made by the respondent to share his love and affection with his daughter, who was 5 years old then and now about 21 years. Under those circumstances, we feel that asking the appellant to join the respondent along with her child may lead to further complications in the matrimonial life, more so, having regard to the version of the appellant's family that the respondent has married again and is having children through his second wife.

12) The main comment of the learned counsel for the respondent appears to be that when the victim herself was not examined, it is strange as to how the order under challenge can be set aside. In other words, he pleads that even though the appellant is a deaf and dumb, there are modes and methods by which her evidence can be recorded. No effort was made by the trial Court to summon the said witness nor did the appellant make any effort to come and give evidence.

13) The counsel for the appellant would submit that she being a deaf and dumb lady, it is very difficult to a person to interpret in a place like Proddatur, and he pleads that the same cannot be made a ground to accept the plea of the husband. It is his plea that since the victim was able to convey to the father about the acts and harassment and the reason for her refusal to live with her husband, the same can be made the basis to reject the request for restitution of conjugal rights. In order to appreciate the same, it would be useful to extract the evidence of RW.1-father, which is as under:

“The respondent is my daughter. The petitioner, who is the husband of the respondent is son of my wife’s elder brother. The marriage between the petitioner and respondent was solemnized at Tirumala in the year 1992. I am having only three daughters. I am financially sound owning both movable and immovable properties. I presented at the time of marriage some gold ornaments like waist belt (vaddanam), a chain of two rows, thali chain and hand coupling (vanki) weighing in all 72 tolas and paid cash of Rs.4,00,000/- as gift to my daughter. Petitioner and his stepbrother are members of joint family and the petitioner’s stepbrother Chinna Obula Reddy received the said cash and he is 16 years older than the petitioner. From very beginning of the marriage the respondent is staying in my house and she used to go occasionally to the house of the petitioner at Yellampalli Village, Mydukur Mandal. The petitioner and his stepbrother are having house in Y.M.R. Co-operative colony, Proddatur. The respondent’s daughter is 6 years old studying U.K.G. at Hyderabad in Viswabharathi Vidya Mandir Convent and I am educating her by spending lot of money. The petitioner never evinced any interest in his daughter and he had never gone to Hyderabad to see his daughter.

Since three years there developed differences between me and petitioner’s family, particularly with petitioner’s stepbrother in regard to management of Everest Lodge at Proddatur. Whenever the respondent went their village, I

understand on my enquiry that the respondent used to be beaten showing cruelty to her demanding to get money from me. The petitioner, his stepbrother and his wife thought of petitioner getting married again and got one Perla Dhanalakshamma, who is petitioner elder sister's daughter namely Sarojanamma of Yellampalli village of Yerragunta Mandal. I preferred a case on behalf of the respondent against petitioner and his step brother for an offence punishable under Section 498-A IPC in Proddatur III Town Police Station and after due investigation charge sheet was filed and the said case is pending before the I Additional Judicial Magistrate of First Class, Proddatur.

The petitioner never evinced any interest in respondent and his daughter and he is not interested in the welfare of his daughter. Though the respondent daughter is studying in convent at Hyderabad, the petitioner did not choose to spend single pie on her. I submit that the petitioner at the instigation of his stepbrother, who is interested in my property, as I do not have sons, the present O.P. is filed after the criminal case was filed. There is imminent threat to the life of the respondent, if she joins her husband. The petitioner is maintaining perfect family life with his second wife and even on that case also restitution of conjugal rights cannot done."

14) Section 9 of Hindu Marriage Act, deals with restitution of conjugal rights, which reads as under:

"9. Restitution of conjugal rights: —When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation. —Where a question arises whether there has been reasonable excuse for withdrawal from the society, the

burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

15) The question now would be whether there has been any reasonable excuse of the appellant for withdrawal from the society of her husband, as the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

16) Even accepting the allegations in the petition that it was the wife, who was withdrawing from the society, it is to be seen whether any reasonable cause was shown for withdrawing the society. The averments in the report given for the offence punishable under Section 498-A IPC show that she was subjected to harassment by demanding her to get money from her father, which lead to registration of a case in Crime No.72 of 2003 of Proddatur III Town Police Station. In the absence of any material to show as to what happened to the case registered under Section 498-A IPC, the fact of lodging the report being undisputed, definitely, it would be a reasonable cause for her to live separately from her husband, more so having regard to the circumstances and facts which are referred to earlier.

17) Insofar as the query raised by the learned counsel for the respondent that the trial Court erred in not examining the victim, who is a deaf and dumb lady, a learned Single Judge of this Court dealt with an identical situation in *Khaleel Beig v. Sk.Mothi Begum*<sup>1</sup>. It was a case when an application came to be filed seeking permission of the Court to permit her elder son namely Sk. Nawab, to depose evidence on her behalf in A.T.C. and treat the same as her evidence.

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<sup>1</sup> (2005) 5 ALD 228

The trial Court allowed the application, which was challenged by way of Civil Revision Petition. Dealing with Section 119 of the Evidence Act, this Court observed as under:

“6. It is to be remembered that [Section 119](#) of the Act deals with only examination of a dumb witness but not a deaf and illiterate. Therefore, even if a question is put to a deaf witness and because of the hearing impairment, it is not possible for such a witness even to express by signs. From the affidavit filed in support of the petition filed before the Trial Court, it appears that the respondent herein was not only dumb, deaf but also illiterate. In such a case, even [Section 119](#) of the Act would not come to her rescue completely. The genuine case, if any, of the respondent herein shall not suffer because of the impairment in all the ways and in such a situation, such person cannot be denied of justice even though the evidence is adduced through somebody. Moreover, in the instant case 'somebody' is no other than her son. In such peculiar facts and circumstances, it is always desirable that the respondent herein should be assisted by the son and the evidence of the son should be treated as the evidence of the mother.”

18) In para No.7 the Court observed that the view of the Court is in deviation of a general principle that the evidence of the son has to be treated only as evidence with regard to the facts known to him and the same shall not be treated as the evidence of the respondent herein as such. Having regard to the facts and circumstances of the case, this Court sustained the order of the Trial Court.

19) Situation on hand though not totally in line with the judgment referred to above, but taking a clue from the judgment referred to above and having regard to the facts in issue, we feel that the same cannot be taken as a substantial ground to set aside an application filed under Section 9 of the Hindu Marriage Act. In fact, even the trial Court considered the evidence of the father and in the absence of any

proof with regard to bigamy and other circumstances allowed the O.P. But however, the criminal case registered under Section 498-A IPC, which made the appellant to leave the company of the respondent can be treated as a cause for living separately. Even assuming for the sake of argument that the criminal case ended in an acquittal, but still having regard to the fact that the husband and relatives got a grouse pursuant to the registration of crime and bad blood flown between two families, the refusal by the wife and daughter to join the company of the respondent appears to be justified coupled with the attitude of the respondent/ husband in not showing any love and affection towards his daughter since last 20 years. Hence, we feel that the order passed directing the appellant to join the respondent and directing both of them to live together would add counter productive and it is bound to be source of greater misery for the parties.

20) For the aforesaid reasons, the Civil Miscellaneous Appeal is allowed and the order dated 20.02.2006 passed in O.P.No.21 of 2004 on the file of the Senior Civil Judge, Proddatur is hereby set aside.

21) There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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C. PRAVEEN KUMAR, J

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T. RAJANI, J

09.08.2018  
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