

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CIVIL MISCELLANEOUS APPEAL No. 234 of 2006

JUDGMENT:

Assailing the order and decree dated 21.02.2006 in O.P.No. 17 of 2004 on the file of the Court of the Senior Civil Judge at Sangareddy, Medak District, wherein an application filed by the petitioner/husband under Section 13(1)(ia) of Hindu Marriage Act seeking dissolution of marriage, was allowed, the present appeal came to be filed by the respondent/ wife.

2. For the sake of convenience, the parties are hereinafter referred to, as arrayed in the O.P.

3. The respondent is the wife of the petitioner. Their marriage was solemnized on 11.05.1997, and out of wedlock, they were blessed with two male children and a female child. Out of the two male children, one child expired. The case of the petitioner is that since 2001, the respondent is insisting him to shift their family to Hyderabad, and when the petitioner did not agree for the same and she started harassing the petitioner mentally. It is said that the respondent, without informing the petitioner, went to Hyderabad to her parents' house.

4. It is stated that on 29.03.2003, when the respondent was in her parents' house, the petitioner approached her with his family members and requested her to come to Sadasivpet, but, the respondent did not agree for the same, and with the help of her family members, tried to beat the petitioner. Subsequently, the petitioner got issued a legal notice on 10.06.2003, with a request to the respondent to join him, but, she gave a reply notice with false allegations. Another letter was addressed by the petitioner to the advocate for the respondent with a request to advise the respondent properly, but, there was no response to the said letter.

5. In support of his case, the petitioner/husband examined himself as PW1 and also examined K.Paghnath Rao and V.Manik Rao of Sadasivpet as PWs 2 and 3 and got marked Exhibits A1 to A6, while the respondent/wife examined herself as RW1 and got marked Exhibit B1-the undertaking dated 29.03.2003 given by the petitioner in favour of the respondent, in the presence of elders.

6. Basing on the oral and documentary evidence adduced by both the parties, the learned Sessions Judge allowed the application filed by the petitioner/husband and granted divorce. Challenging the findings given therein, the present appeal came to be filed by the respondent/ wife.

7. Heard the learned counsel for the petitioner and perused the record. There is no representation on behalf of the respondent.

8. The learned counsel for the petitioner would submit that the ground on which divorce was sought, being that the petitioner

refused to accept the request of the respondent for shifting to Hyderabad, where her parents stayed.

9. According to the learned counsel for the respondent, there is no evidence on record to show that the respondent asked the petitioner to shift to Hyderabad. He pleads that though the respondent is willing to join the petitioner at Sadasivpet, the petitioner is refusing to accept her. He, therefore, pleads that there are no valid grounds to grant divorce.

10. As seen from the record, the marriage between the petitioner and the respondent took place on 11.05.1997. Out of wedlock, they were blessed with two male children and one female child. Out of the two male children, one child expired. The evidence on record also establishes that since 2001, both of them have been living separately. Keeping these factual issues in view, we have to consider whether the petitioner/husband was justified in seeking divorce, or whether the court below was right in dissolving the marriage between the petitioner and the respondent.

11. It may not be necessary to reiterate the contents of the petition, but it would be just and proper to refer to the evidence of the witnesses. PW1, in his evidence in chief, reiterates the contents of the petition filed by him. According to him, since February, 2009, the respondent was insisting him to shift the family to Hyderabad and live with her parents, to which he refused, as he was well settled with his profession in Sadasivpet

town. According to him, even on the earlier occasion, the respondent pressurized him to shift the family to Hyderabad, to which he did not agree. When her repeated persuasion failed, she changed her attitude and started abusing him in filthy language and never cooperated with him in the household work. According to him, she used to quarrel even on petty issues. It is stated that on 29.03.2003, the respondent went to her parents' house without informing the petitioner. Though the petitioner went to the house of the parents' of the respondent, and requested her to come to Sadasivpet, she showed no interest to join him at Sadasivpet. It is his plea that during that period, the family members of the respondent attacked him and also damaged his shop. Subsequently, legal notices came to be issued by the petitioner to the respondent to join his company, to which a reply came to be issued, making false allegations. After such reply, the petitioner again sent a letter to the advocate for the respondent, with a request to advise the respondent to join him at Sadasivpet, for which there was no reply.

12. While so, on 05.11.2003, the counsel for the respondent informed the petitioner to come to Hyderabad and take the respondent along with him. Believing the representation made by the learned counsel for the respondent, the petitioner went to the house of the parents of the respondent on 17.11.2003 to get the respondent back to Sadasivpet. On that day, the respondent, along with her family members, attacked the petitioner, apart from abusing him in filthy language. It is further stated that in the first

week of January, 2004, the respondent, along with her parents, came to Sadasivpet and took the petitioner forcibly to an unidentified place and threatened him to shift the family to Hyderabad. As the petitioner did not agree, he was beaten and threatened not to report to the police.

13. In fact, the appellant, in his cross-examination, stated that he is ready to lead marital life with the respondent at Sadasivapet, but, she is not willing to join him at Sadasivapet, as she wants the appellant to go over to Hyderabad where her parents live. Pursuant to the report given by the respondent against the petitioner in the police station, an agreement dated 29.03.2003 is said to have been prepared, which contains the signature of the petitioner, attested by PWs 2 and 3 as witnesses. The said document is marked as Ex.B1, which we will discuss later.

14. In the cross-examination, the suggestion that he was kidnapped, was denied by the petitioner. The suggestion that the respondent was always living happily and amicably, was also denied by the petitioner. The suggestion that this case has been filed as a counterblast to the criminal case filed by the respondent, was also denied by the petitioner.

15. PWs 2 and 3 are the two independent witnesses. PW2 is the neighbour of the petitioner, while PW3 is the Counsellor, who resides in the same village. PW2, in his evidence in chief, deposed that since his childhood, his family and family members of the petitioners are neighbours. He attended the marriage of the

petitioner and respondent, which was performed in Sadasivapet, According to him, the respondent started ill-treating the petitioner frequently and used to go to her parents' house without the permission of the petitioner. It is stated that two or three times, the family members approached her and brought her back to Sadasivpet. But, the respondent never lived with the petitioner continuously for two months. According to him, the respondent used to quarrel with the petitioner and abuse him and his family members in filthy language. Several times, PW2 is said to have tried to pacify her, but the respondent never listened to his words and used to abuse him in unparliamentary language. His evidence also discloses that on more than one occasion, he went to the police station and pacified the matter.

16. PW2 further deposed that in the month of January, 2004, the respondent, along with her parents, came to Sadasivpet, took the petitioner to an unidentified place, beat him mercilessly and threatened him with dire consequences. At that time, PW2 and some local people intervened and pacified the matter. His evidence further discloses that he came to know through the family members that the respondent was very much interested to shift the entire family to Hyderabad and live with her parents, to which the petitioner was not ready. His evidence also discloses that on earlier occasion, the respondent, along with her family members came to Sadasivpet and beat the petitioner at his shop where he was working and threw stones and damaged the stitching machines and glasses of the shop. After coming to know about the said

incident, PW2 went there, by which time the respondent and her relatives left the place.

17. In the cross-examination, it has been elicited that the respondent had cordial terms with him and she used to complain to him about their household disputes. It was further elicited that the parents of the respondent came and took the petitioner to the police station, but, he cannot give the date on which the said incident took place. He further admits that he came to know from the petitioner that the respondent was in Hyderabad and that there were disputes between him and the respondent. The neighbours at the tailoring shop of the petitioner informed PW2 that the shop of the petitioner was damaged. He enquired the petitioner as to whether any complaint was given by him, to which he denied. The cross-examination also refers to the mediation which took place and the execution of Ex.B1. In Ex.B1, the petitioner indicated to look after the respondent well without causing any trouble to her.

18. PW3 is the Ex-Counsellor, Sadasivapet, who lives in the same area where the petitioner lives. According to him, the respondent used to quarrel for every petty dispute and abuse him in filthy language. She never cooperated in the household work and that she never lived with the petitioner for more than two months at a stretch. In the month of January, 2004, the respondent, with her parents, came to Sadasivpet, took the petitioner to an unidentified place and beat him mercilessly and threatened him with

dire consequences. After some days, the respondents, along with some unsocial elements, attacked the petitioner and lodged a criminal case against him. His evidence also discloses that he, along with PW2, went to the police station, where Ex.B1 was drafted at the instance of the Sub Inspector of Police. His evidence toes in line with the evidence of PW2 with regard to the ill-treatment of the petitioner at the hands of the respondent, and the attack on the petitioner and his shop on 16.05.2004 by the family members of the respondent. PW3 was also cross-examined but nothing useful came to be elicited. However, the suggestion that no such incident took place at the house of the petitioner, was denied by him.

19. As against the oral evidence of PWs 1, 2 and 3, there lies the evidence of RW1-respondent, who denies the allegations against her in the chief evidence and also the answers elicited in the cross. She denies the allegations made in the notice which was sent by the petitioner, and also the replies given under Ex.A3 to A6.

20. From the material on record, it appears that the respondent is pitching her arguments mainly on Ex.B1, the undertaking given by the petitioner, which is said to have been executed in the presence of the Sub Inspector of Police, Sadasivpet Police Station. It contains three clauses, which are under:

“1. It is hereby agreed that there should not be any mental harassment or physical harassment from the members of the family or others to Smt. Rebba Shoba W/ o. Veeresham.

2. It is hereby agreed that with regard to the partition of property after 10 days in the presence of the elders the respective shares will be allotted for the purpose of registration separately.

3. Having regard to the above written aspects this Agreement is got written on my own accord stating that there will not any inconveniences or harassments through me.”

21. It is to be noted that this document was executed on 29.03.2003. The clauses, if read together, appear to be inconsistent with each other. While the first clause states that there should not be any mental or physical harassment to the respondent from the members of the family of the petitioner, the second clause refers to the partition of the property after ten days in the presence of elders and respective shares to be allotted for the purpose of registration separately. The third clause states that the said agreement was written on the own accord of the petitioner and that there would not be any inconvenience or harassment through him. Therefore, on one hand, the said agreement speaks about the petitioner and respondent living together and an assurance by the petitioner that there will not be any physical or mental harassment from his side to the respondent, while the second clause speaks about the partition of the entire property within ten days in the presence of elders and registration of property separately. There is no justification for these two clauses to form part of the same agreement. According to us, both

these clauses run contra to each other. The question of seeking partition of the property and registering the same in the name of the respondent, would not arise when both the petitioner and respondent have decided to live together. The agreement does not, anywhere indicate as to why the respondent intends to get the property registered in her name. Though the said document was witnessed by PW2, the same is not reflected in the evidence of PW2.

22. The purport of the document-Ex.B1 appears to be amicable settlement between the parties and partition of the property, at the same time. Hence, the manner in which it was executed throws any amount of doubt, viz., as to whether it was done voluntarily, when the same was executed in the police station. Therefore, the argument of the learned counsel for the respondent that the harassment was from the petitioner himself, which according to the respondent, is reflected in Ex.B1, cannot be accepted.

23. On the other hand, Ex.B1 gives some material to show that the respondent intended to live separately with the property. A close perusal of the said document further shows that nowhere in the said document, the respondent expressed her willingness to join the petitioner. There is no material to show that this document reflects the intention of the respondent to join the petitioner at Sadasivpet. Such being the position, the contention

of the respondent that the respondent was put to pressure for executing the document in the police station, cannot be accepted.

24. Keeping this document in the background, we shall now deal with the oral evidence available on record. Though the evidence of PW1 in chief is totally denied by RW1 in chief, but, their evidence is required to be tested with the evidence of PWs 2 and 3, who are independent witnesses. In evidence in chief, they categorically stated the manner in which the respondent was behaving with the petitioner. Their evidence further discloses that on more than one occasion, the family members of the respondent beat the petitioner and also damaged his shop. Both of them consistently stated that on one occasion, the petitioner was called to the house of the respondent, where he was beaten. PW2 claims to be present at that time, when he intervened and saved the petitioner. The evidence of these two witnesses further shows that when PW2 tried to intervene and settle the issues, the respondent used to abuse him in filthy language. Though both of them were subjected to cross-examination, nothing useful came to be elicited to disbelieve their version. On the other hand, the answers given by PWs 2 and 3 in the cross-examination itself show the attitude of the respondent against the petitioner.

25. In the absence of any other evidence on behalf of the respondent other than herself, definitely importance has to be attached to the evidence of PWs 2 and 3, who are independent witnesses and who are known to the respondent also. Thus, if the

evidence of PWs 2 and 3, coupled with the contents of Ex.B1, which came to be executed in the police station, is taken into consideration, we feel that the judgment of the trial court warrants no interference.

26. Apart from that, it is to be noticed that both the parties have been living separately since 2001. In similar circumstances, the Apex Court in *S.BRAHMANANDAM v. S.RAMA DEVI*¹, held that once efforts for couple's reunion do not fructify, forcing couple to stay together will prove counter productive and it is bound to be source of greater misery for parties. Similarly, in *KALAPATAPU LAKSHMI BHARATI v. KALAPATAPU SAI KUMAR*², it is held that when the parties have been living separately for nearly 14 years, there can be no escape from the conclusion that the marriage has irretrievably broken down, and as held by the Hon'ble Supreme Court, a long time separation itself would lead to mental cruelty.

27. Having regard to the fact that the petitioner and respondent have been living separately and the possibility of reunion between them being very remote, we uphold the order of dissolution of marriage of the petitioner with the respondent, by confirming the findings in the order and decree dated 21.02.2006 in O.P.No. 17 of 2004 on the file of the Court of the Senior Civil Judge at Sangareddy, Medak District.

¹ 2017 (1) ALD 241 (DB)

² 2017 (1) ALD 272 (DB)

28. Accordingly, C.M.A is dismissed. As a sequel thereto, Miscellaneous Petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

28.06.2018
DMG

