

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT. JUSTICE T.RAJANI**

C.M.A.Nos.858 AND 859 OF 2005

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

Heard both sides and perused the record.

2. The present appeals, under Section 28 of the Hindu Marriage Act, 1955 (for short, 'the Act'), came to be filed against the orders and decrees, dated 26.04.2005, passed in O.P.Nos.36 of 2000 and 1 of 2002 on the file of the Senior Civil Judge, Amalapuram, wherein O.P.No.36 of 2000 filed by the husband, under Section 13(1) (ia) and (ib) of the Act, seeking dissolution of marriage on the ground of cruelty, was dismissed, whereas O.P.No.1 of 2002 filed by the wife, under Section 9 of the Act, seeking restitution of conjugal rights, was allowed.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in O.P.No.36 of 2000.

4. The averments in the petition are as under:

"The respondent is the legally wedded wife of the petitioner. Their marriage took place on 24.10.1996 at Yanam as per Hindu Rites and Caste Custom. After the marriage, the respondent joined the company of the petitioner and stayed there for three days. It is stated that, from the beginning, the respondent is a termagant lady and did not care the petitioner. She never prepared food for him. She used to introduce him to their relatives as husband – cum – servant, in a very insulting

manner. While so, she left the conjugal home and started living at Yanam. It is stated that there was no happy conjugal life between both of them. The respondent used to threaten him that she will file criminal cases against him, as her brother is no other than the S.I. of Police at Yanam. It is stated that even after the transfer of brother of the respondent, she did not join the petitioner to lead conjugal life. The petitioner raised a dispute at Yanam in the month of August, 1997, in the presence of elders, but in vain. It is stated that the behaviour and attitude of the respondent amounts to cruelty. Having regard to the fact that the respondent has been living separately since August, 1997 and in view of her attitude, the petitioner filed O.P.No.36 of 2000 seeking divorce on the grounds of cruelty and desertion.

5. A counter affidavit came to be filed by the respondent denying the allegations made, except the relationship. It is stated that she used to work as an Anganvadi Teacher at Yanam, as the petitioner and his parents accepted to continue her in the job even after her marriage. The petitioner used to visit Yanam from Mummidivaram and lead marital life with her. After the death of her mother on 22.11.1999, she resigned her job and went to her in-laws house to lead a marital life. They lived for few days and thereafter, disputes arose between her and the family members of the petitioner in respect of demand of the petitioner to get share in the house property, which is in

the name of mother of the respondent, and to bring some amount as additional dowry from her brother. Further, the petitioner and his family members intensified the harassment, as her mother executed some documents in favour of her sister. The petitioner and his family members harassed her mentally and physically and later, necked her out from the matrimonial house. Hence, she pleads that her desertion was not willful.

6. During trial, the petitioner got examined himself as PW.1, but no documents were marked. On behalf of the respondent, RWs.1 to 5 were examined and Exs.R1 and R2 came to be marked.

7. On considering the evidence on record, the trial Court, vide orders under challenge, while dismissing the O.P. filed by the petitioner – husband, allowed the O.P. filed by the respondent – wife. Aggrieved by the same, the present appeals are filed by the petitioner – husband.

8. Today, when the matter is taken up, both the learned counsel stated that the whereabouts of their clients are not known. It is also stated that right from the year 2000, the petitioner and the respondent are living separately, which is evident from the record. In view of the above, both the counsel plead that there is no possibility of the petitioner and respondent joining together, even if the appeals are dismissed.

9. It is to be noticed that both the parties have been living separately since 2000. In similar circumstances, this Court in **S.Brahmanandam v. S.Rama Devi**¹, held that once efforts for couple's reunion do not fructify, forcing the 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 was 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 Honourable Supreme Court, a long time separation itself would lead to mental cruelty.

10. In view of the fact that both the parties are living separately since last 18 years and as their whereabouts are not known and in view of the representation made by the learned counsel for both sides that they are not in a position to contact their clients, in spite of making best efforts, it would be highly impossible that both the parties would live together, even if the appeals are dismissed. In view of the afore-stated judgments, since long lasting separation amounts to mental cruelty, this Court is of the view that the impugned orders are liable to be set aside.

¹ 2017 (1) ALD 241(DB)

² 2017 (1) ALD 272 (DB)

11. Accordingly, both the appeals are allowed setting aside the impugned orders and decrees, dated 26.04.2005, passed in O.P.Nos.36 of 2000 and 1 of 2002 on the file of the Senior Civil Judge, Amalapuram, granting divorce.

Miscellaneous Petitions, if any, pending in these appeals shall stand closed. There shall be no order as to costs.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T. RAJANI

August 02, 2018
MD



**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT. JUSTICE T.RAJANI**



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