

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CIVIL MISCELLANEOUS APPEAL No. 434 of 2007

JUDGMENT:

Assailing the judgment in O.P.No. 151 of 2006 on the file of the Principal District Judge, West Godavari District, Eluru, wherein the petition filed under Section 10(x) of the Divorce Act seeking dissolution of marriage between the petitioner and respondent, was dismissed, the present appeal came to be filed by the petitioner/ appellant.

2. For the sake of convenience, the parties are referred to, as arrayed in the O.P. The petitioner is the legally wedded husband of the respondent and their marriage was solemnized according to Christian rites and customs on 18.01.2004 at Lutheran Church, Mystyapuripalem of West Godavari District. Though the marriage was consummated, they had no issues. It is further stated that the petitioner married the respondent without taking any dowry, but, ever since their marriage, the respondent subjected the petitioner to harassment and cruelty. It is stated that on one occasion, the respondent informed the petitioner that he is not a suitable match to her and that her marriage with him was not to her liking, but was performed only at the instance and force of her parents.

Inspite of the hostile attitude of the respondent, the petitioner is said to have extended love and affection towards her.

3. The petitioner contends that he is working as a Teacher in M.P. Elementary School at Guntapallavapalem or Mogalturu Mandal and that the respondent insisted the petitioner to come over to Kamavarapukota, though it was not possible for him. It is stated that after the marriage, both of them lived together at Matsyapuripalem for one month, and on 30.10.2004, the father of the respondent came to the said village and entered into a quarrel with the petitioner. Thereafter, he took away the respondent with him without the consent of the petitioner. As the respondent did not join with him, the petitioner filed O.P.No. 359 of 2005 for restitution of conjugal rights before the trial court. During the pendency of the said proceedings, the respondent agreed to join him and on such assurance, the matter was placed before the Lok Adalat on 06.08.2005. A compromise was entered into, but, it is stated that the respondent did not join the petitioner subsequent to the said compromise. It is stated that ultimately, she joined the petitioner on 15.08.2005, and thereafter, she again started ill-treating him and exhibited hostile behaviour towards him. The averments in the petition also show that a case under Section 498-A was filed by the respondent against the petitioner.

4. It is further stated that on 18.01.2006, the respondent deserted the petitioner after altercating with him and in the course of the said altercation, she threw household articles at the

petitioner. The petitioner contends that since the marriage between him and respondent has broken down permanently, a petition for divorce came to be filed before the trial court.

5. A counter came to be filed denying the averments made in the application filed by the petitioner, contending that the petitioner sent the respondent to her parents' house on 18.02.2006 for medical check up, as she was pregnant, and filed the petition seeking dissolution of the marriage behind her back, without there being any mention of the said fact in the petition, which shows the conduct of the petitioner and his hostile attitude towards her. It is further stated that, at the time of marriage, the parents of the respondent gave her cash of Rs.1,50,000/- towards Stridhana, which was taken by the petitioner. Further, an amount of Rs.5,000/- was given towards Adabaduchu lanchanams and the petitioner was also provided with a vehicle at his request. The respondent denied the allegation that she expressed dislike or exhibited hostile attitude towards the petitioner, as she hails from an educated family, her father being a retired Head Master, while her mother is a retired government employee. It is further stated that by the time of marriage, the respondent appeared for DSC written test and was waiting for a job. It is stated that after three days of the marriage, the petitioner started harassing her, stating that she will not get a job and without securing a job, he cannot lead marital life with her. It is stated that the parents and sisters of the petitioner were also harassing the respondent mentally and physically, on account of which she became weak, and on a phone

call from her about the situation, on 30th October, 2004, her father came to Matsyapuripalem and the petitioner sent her along with her father to their house at Kamavarapukota for some time.

6. The averments in the petition further show that during her stay at her parents' house, the petitioner and his parents did not visit her, despite requests made by her, but, surprisingly, she received a notice in O.P.No. 359 of 2005 for restitution of conjugal rights. It is stated that pursuant to the compromise entered into in the case before Lok Adalat, she joined the petitioner and became pregnant in the month of December, 2005. It is stated that inspite of her pregnancy, the petitioner used to harass her both physically and mentally, and on intervention of the elders, he finally agreed to send her to Kamavarapukota on 18.2.2000 for medical check up and for recovery from weakness.

7. While so, it is stated that the respondent secured a job as Grade-II Hindi Pandit at M.P.U.P. School, Telikicherla of Nallajerla Mandal. However, the petitioner did not allow her to join him.

8. Before proceeding with the matter, the court below counseled with the parties as to whether they are willing to live together, for which the respondent stated that she is willing to join the petitioner. However, the petitioner expressed his willingness to take back the respondent. Hence, the conciliation failed.

9. During the course of trial, PWs 1 to 4 came to be examined by the petitioner and Ex.A-1 and A-2 came to be marked. On

behalf of the respondent, R.Ws 1 to 4 were examined, but, no documentary evidence was adduced. After hearing both sides and after taking into consideration the evidence on record, the trial court dismissed the O.P.

10. The point that arises for consideration is whether the order passed by the trial court in dismissing the petition filed by the petitioner under Section 10(x) of the Divorce Act, seeking decree of divorce, warrants interference.

11. The main ground urged by the learned counsel for the petitioner is that the respondent was hostile towards the petitioner, though he showed love and affection towards her. It is further pleaded that the fact of respondent deserting the petitioner on her own is sufficient to grant divorce.

12. There is no representation on behalf of the respondent. However, the evidence on behalf of the respondent shows that the respondent is willing to join the petitioner and it is the petitioner who is not willing to take back the respondent. In order to appreciate the dispute between both parties, it is useful to refer to the evidence of the witnesses, which is as follows:

13. PW1 is the petitioner herein. In the cross-examination, he admitted that after his marriage with the respondent, they lived in the house along with his sister and parents. However, he denied the allegation of meting out harassment to the respondent by not providing food. PW1 further admitted in the cross-examination

that he filed O.P.No. 2359 of 2005 for restitution of conjugal rights and the matter was compromised before the Lok Adalat. It is also admitted that subsequent to the compromise, the petitioner took the respondent to his house.

14. PW2 is the cousin of the petitioner. The evidence of PW2 shows that the petitioner and respondent lived together for one month, and thereafter, the respondent deserted the petitioner. He further states that the father of the respondent came to the village and took the respondent along with him, and that the respondent also assaulted the petitioner and went away. In the cross-examination, he admits that his house is situated at a distance of 10 yards from the house of the petitioner, and therefore, he cannot say anything about the private affairs of the petitioner and respondent.

15. The evidence of PW3 is also on similar lines as that of PW2. However, PW3, in his cross-examination, stated that his house is situated 10 or 15 meters away from the house of the petitioner, and that he cannot give the correct date when the respondent left the company of the petitioner.

16. PW4, who is residing behind the house of the petitioner, also deposed on similar lines. He also admitted in the cross-examination that he cannot give the date or year when the respondent left the petitioner, but, it was in the month of November.

17. The respondent-RW1 deposed that she joined the matrimonial home at Matsyapuripalem, where her husband and mother-in-law were residing, and that the elder sister of her husband was also residing with them. She states that just three days after joining him, her husband (petitioner) started harassing her mentally and physically, without providing any food, on the instigation of his parents and sister, on the ground that she could not secure any job. She further states as she had become weak due to lack of food, her father visited her house in the month of October, 2004, and on his request, the petitioner sent her to her parents' house for some time to regain strength. The respondent also deposed to the fact of petitioner filing an O.P for restitution of conjugal rights, the compromise before the Lok Adalat, and the petitioner not allowing her to join his company. She states that she is still desirous of living with the petitioner and lead marital life.

18. RW2, who is the father of the respondent, denied the fact that he brought his daughter to his house in order to obtain transfer of the petitioner to his place and the act threatening the petitioner of filing a criminal case against him by influencing the local MLA. He further denied the fact that he was not willing to send his daughter to lead marital life with the petitioner.

19. RWs 3 and 4, the mediators who tried to resolve the disputes between the petitioner and respondent, deposed that they visited the house of the petitioner at Matsyapuripalem in the third week of

February, 2006 and saw the respondent in a weak condition, and that the respondent informed them that the petitioner and his mother were harassing her and not providing food and medical check up, though she was pregnant. RWs 3 and 4 questioned the petitioner and his mother, to which they stated that they would treat the respondent properly. Thereafter, the petitioner sent her to her father's house for medical check up and to regain strength.

20. A perusal of the record shows that the when the respondent deserted the petitioner, he filed O.P.No. 359 of 2005 for restitution of conjugal rights. Strangely, though the petitioner made allegations of harassment against the respondent, he entered into a compromise and agreed to take her back. If really the petitioner was subjected to cruelty in the hands of the respondent and if really her attitude was hostile, the petitioner would not have agreed for a compromise to take her back. The evidence on record further discloses that PW1 (the petitioner), his mother and sister used to harass the respondent mentally and physically and the attitude of the petitioner and his mother for not visiting the parents house of R.W.1, when she gave birth to a male child, would definitely amount to cruelty, more so, when such ill-treatment was meted out to the respondent while she was in the company of the petitioner.

21. The material on record further shows that no evidence was adduced by the petitioner to show that he suffered harassment in the hands of the respondent. The evidence of R.Ws 1 to 4, more

particularly, R.Ws 3 and 4, the mediators and independent witnesses, in their evidence deposed about the attitude of the petitioner, the condition in which the respondent was at the time, when they visited the house of the petitioner and the information which they got from the respondent at that time relating to the harassment in the hands of the petitioner when she was in the advanced stage of pregnancy, definitely prove the allegation of the petitioner being hostile towards the respondent.

22. Though the learned counsel for the appellant tried to rely upon the evidence of PWs 3 and 4 to show that the petitioner was subjected to cruelty in the hands of the respondent, their evidence runs contra to the evidence of PW1. It would be appropriate to extract the relevant finding given by the trial court with reference to the evidence adduced by RW3, which remained un-controverted. The same reads as follows:

“The evidence of this witness is against the evidence of PW1 as PW1 himself admitted that his wife was taken by her father to her house and later again she came and lived with him and later, the matter was settled before the Lok Adalat and afterwards she came and lived with him and if really, the petitioner was vexed with the behaviour of the respondent, he would not have got back his wife either in the mediation which took place before the elders or at Lok Adalat. So, this evidence is also not useful.”

23. Admittedly, PWs 2 to 4 could not have seen the disputes between the petitioner and respondent, as their houses are far away from the house of the petitioner. Definitely, they are not

direct witnesses to any of the affairs between the petitioner and respondent. On the other hand, the evidence of R.Ws 3 and 4 show that when they visited the house of the petitioner, they noticed the condition in which the respondent was, and on enquiry, she disclosed about the harassment meted out to her by the petitioner.

24. Having regard to the above, we feel that the plea of the petitioner that he was subjected to harassment in the hands of the respondent, cannot be accepted. Hence, the judgment dated 23rd November, 2006 in O.P.No. 151 of 2006 on the file of the Principal District Judge, West Godavari District, Euru warrants no interference.

25. Accordingly, this appeal is dismissed. Miscellaneous applications, if any, stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

15.02.2018
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