

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HONOURABLE Ms. JUSTICE J.UMA DEVI

C.M.A.No.593 of 2007

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

- 1) Heard learned counsel for the petitioner. No representation on behalf of the respondent. Hence perused the records.
- 2) The present appeal came to be filed under Section 28 of the Hindu Marriage Act, aggrieved by the order dated 22.11.2006, passed in O.P.No. 51 of 2005, on the file of the Senior Civil Judge, Addanki, wherein an application filed by the respondent herein under Section 13-1(i-a)(i-b) of Hindu Marriage Act, 1955 (for short, 'the Act'), seeking dissolution of marriage, was allowed.
- 3) For the sake of convenience, the parties will hereinafter be referred to as arrayed in the Original Petition.
- 4) The gist of the facts in the petition filed under Section 13 1(i-a)(i-b) of the Act is that the petitioner-husband was a resident of Vaidana village, eking out his livelihood by doing cultivation whereas the parents of the respondent-wife are residents of Addanki. The marriage between the petitioner and the respondent was performed on 17.11.2000 at Vaidana village as per Hindu caste customs. Soon after the marriage, the respondent-wife joined the

petitioner-husband and both of them lived together happily for a period of one year. Out of the wedlock, they were blessed with a daughter by name Sai Ramya on 10.11.2002. It is stated that since beginning, the respondent used to insist the petitioner to shift his family to Addanki, or to live with her parents, much to the dislike of the rural background of the petitioner. But the same was refused by the husband on the ground that he has to look after his parents and that his brother is at Hyderabad on employment. Annoyed by the same, the respondent started picking up quarrels on flimsy grounds. Further, in order to defame the petitioner, she pretended as if the petitioner-husband is harassing her. The affidavit further shows that in her seventh month of pregnancy, she was taken to her parents for delivery. After delivery, she did not join the petitioner. In spite of his best efforts made not only by the husband, but also through the elders, who are PWs.2 and 3, she did not join the husband. Since then the respondent is staying away from the husband. Hence, the present O.P. came to be filed by the husband seeking divorce. A counter came to be filed by the respondent denying the allegation of desertion and cruelty against the respondent. It is stated that within a period of one year after marriage, the petitioner at the instance of his parents, ill treated her for additional dowry and also used to beat her indiscriminately, apart from abusing her in filthy language. It is stated that the respondent was necked out from the house 1 ½ years after the marriage, without any reasons. To meet the demands of

the petitioner, the mother of the respondent obtained loan of Rs.25,000/- from one SK.Subhani and gave it to the petitioner. It is stated that the petitioner-husband kept quiet for some time and again started harassing her. About 7 ½ months prior, while she was pregnant, the petitioner along with his parents picked up a quarrel and necked her out from the house, which resulted in she joining in Kranthi Nursing Home, Addanki, where her un-grown baby got aborted. It is stated that efforts made through one Adilakshmamma turned futile. The averments in the counter would show that the petitioner married one Settupalli Lakshmi of Nujellapalli Village of Mundlamuru Mandal at Malakonda Temple near Kandukur on 24.06.2005, and as such she lodged a report before the Station House Officer, Ballikurava Police Station for the offences punishable under Sections 498-A, 406 and 494 IPC. Hence, it is urged that it was the petitioner, who harassed the respondent and that she never deserted the petitioner.

At the time of enquiry, PWs.1 to 3 came to be examined on behalf of the petitioner and the respondent alone got examined himself as RW.1. No oral or documentary evidence was adduced on either side.

Relying upon the evidence of PWs.2 and 3, more particularly, the evidence of PW2, the trial Court held that the respondent voluntarily deserted the company of the petitioner, without any

reasonable grounds, for more than two years prior to filing of the petition. Assailing the same, the present appeal came to be filed.

5) Learned counsel for the appellant mainly submits that the trial Court erred in believing the evidence of PWs.2 and 3. The court below failed to note that PW3, who is the close relative of the petitioner-husband is more interested in getting the marriage dissolved. It is her case that the Court below found that the evidence of PW3, who mediated the dispute between the parties with regard to the house property, that was promised to be given at the time of marriage, does not establish any cruelty or desertion by the appellant. Coming to the evidence of PW2, she would contend that she is an interested witness and the same cannot be made basis to grant divorce on the ground of desertion.

6) The point that arises for consideration is whether the respondent herein is entitled for divorce on the ground of desertion or whether the respondent left the company of the petitioner/ appellant, without any reasonable cause?

7) Even if the evidence on behalf of the petitioner-husband, who was examined as PW1 is kept aside for a while, there lies the evidence of PWs.2 and 3. PW2 is resident of Vaidana Village and is an agriculturist. His evidence goes to show that the respondent-wife used to insist the petitioner to shift his family to Addanki and the same was refused by the petitioner-husband as his aged parents were

depending on him. It is further stated that respondent used to pick up quarrels with the petitioner for silly reasons and bore grudge against the petitioner for not shifting the family to Addanki. Though he is a distant relative to the petitioner, his evidence cannot be doubted since nothing useful came to be elicited in the cross examination, so as to discredit his evidence. As seen from the evidence of PW1, respondent-wife while carrying 7th month pregnancy was taken to her parents house for delivery, where she gave birth to a baby girl. It is his case that even after delivery, the respondent did not join him, inspite of his personal efforts and also through elders. The said fact was denied by the respondent. According to her, after the delivery of Ramya, she subsequently became pregnant. While she was in 3rd month pregnant, she was necked out by the petitioner-husband and his parents. In the cross examination made on 02.08.2006, the petitioner-husband stated that since four years respondent was not with him. Admittedly, the marriage between the petitioner and the respondent took place on 17.11.2000 and a baby girl was born on 10.11.2002. In the cross examination, the petitioner stated that respondent left him while she was carrying 7th month of pregnancy and his daughter was born in Phanindra Babu's hospital. On coming to know through someone, he along with his parents went there to see the respondent and her daughter. From this, it is clear that respondent was taken by her parents for delivery, where she delivered Ramya. It is the case of the petitioner that inspite of his

demand to send the respondent personally and through mediators, namely, PWs.2 and 3, she did not join him. PWs.2 and 3 are the elders, who spoke about the same. PW2 in his evidence states that the respondent refused to join the petitioner and the respondent's mother also refused to send the petitioner. In the cross examination, which was done on 25.08.2006, it has been elicited from PW2 that about 1 ½ years ago, he mediated the dispute between the parties twice. The answers elicited from the cross examination prove that mediation was after the delivery of Ramya. Further the evidence of PW2 goes to show that on first occasion, he mediated the dispute between the parties along with PW3 and on second occasion, along with the parents of the petitioner. PWs.1 and 2 categorically denied that after delivery of Ramya and when the respondent was carrying pregnancy of 5 months for the second time, she was necked out by the petitioner and his parents. From the evidence of PW2, it is clear that the respondent went to her parents' house for delivery and in spite of demands made by the petitioner personally and also through PW2, she did not join. Even the mother of the respondent refused to send the respondent to the petitioner. Therefore, the respondent left the petitioner as he could not convince his wife to join him.

8) Coming to the aspect of cruelty, respondent stated that he was subjected to cruelty by the petitioner and his parents for additional dowry of Rs.1 lakh. Her plea is that their mother gave Rs.25,000/- by

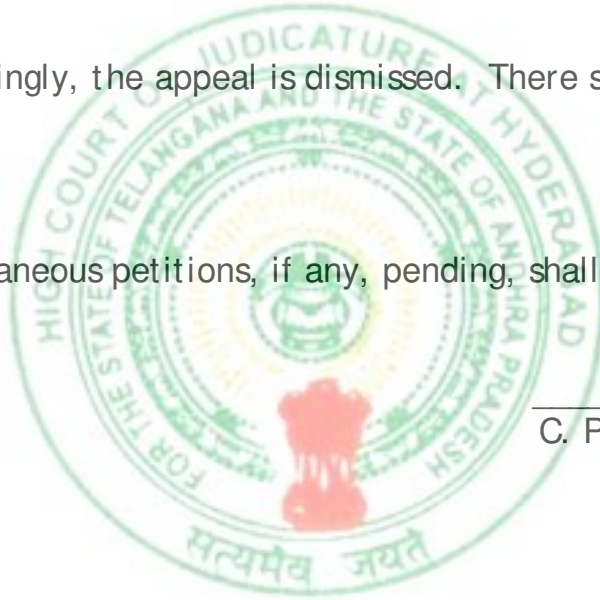
taking loan from one SK.Subhani. As she failed to pay the remaining amount, she was beaten mercilessly, while she was in the third month of her pregnancy. It is her case that she was necked out of the house, which resulted in abortion. If really the respondent was able to establish this aspect, we could say that there is no reasonable excuse for desertion, but her evidence appears to be inconsistent. Though in the chief examination, she deposed before the Court the said aspect, but in the cross examination, it has been elicited that she went to her parents for delivery during the 9th month pregnancy and till the delivery of a daughter, there were no disputes between them. Admittedly, two years after marriage, they were blessed with one daughter by name Ramya. The plea of the respondent is that 1 year after marriage, the petitioner, at the instance of his parents, were ill treating her for additional dowry of Rs.1 lakh by beating and abusing and that she was necked out. But in the cross examination, she admits that till delivery of her daughter, there were no disputes between her and her in-laws. This circumstance alone is sufficient to falsify the allegation with regard to demand of additional dowry by the petitioner and his parents. The counter as well as chief affidavit reveals that the petitioner has forcibly necked out the respondent to bring additional dowry of Rs.1 lakh about 1 ½ years after the marriage, but in the cross examination, she admits that 2 ½ years after her marriage, she was necked out by the petitioner demanding dowry. This circumstance again shows that what she has stated in

the chief is false. Coming to taking of loan of Rs.25000/- from one SK.Subhani, the respondent failed to examine said Subhani, who lent a sum of Rs.25,000/- to the mother of the respondent. Further, her evidence is that after birth of Ramya, the petitioner demanded her mother to give Rs.25,000/- which varies with regard to the time of payment.

9) Having regard to the circumstances stated above, we see no reasons to interfere with the findings arrived by the trial Court and the appeal is liable to be dismissed.

10) Accordingly, the appeal is dismissed. There shall be no order as to costs.

11) Miscellaneous petitions, if any, pending, shall stand closed.



C. PRAVEEN KUMAR, J

J. UMA DEVI, J

15.02.2018
vhb