

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SMT JUSTICE T. RAJANI
CIVIL MISCELLANEOUS APPEAL No.184 of 2006

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

Assailing the order in OP.No.42 of 2003 dated 02.02.2006 on the file of the Senior Civil Judge, Gadwal wherein the application filed under Section 13(1)(ia)(ih) of the Hindu Marriage Act (for short 'the Act') for dissolution of marriage was dismissed, the present appeal is preferred under Section 28 of the Act by the appellant/petitioner.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed in the original petition. The facts, as put forth by the petitioner in the original petition filed in the Court below, are briefly as follows:

The marriage between the parties took place on 22.05.1993 and they lived together till June 2001. Out of the wedlock, they were blessed with four children. It is said that in the month of December 2002, the respondent and her brothers took away one child, Suryaprakash, while he was coming from school and then the respondent left the company of the petitioner at Alampur on 11.06.2001 without any cause. It is said that the respondent asked the petitioner to send their son Jashwanth to the parents of the respondent but the petitioner refused to send his son. Thereafter, the respondent lodged a report at Alampur Police Station, basing on which the police registered a case in Cr.No.46 of 2001 under Section 498-A of the Indian Penal Code and subsequently, the said case ended in acquittal. Since the respondent deserted the petitioner, the aforesaid OP came to be filed seeking dissolution of marriage.

The respondent filed counter stating that the petitioner, his brother, mother and sisters beat her mercilessly and drove her out of the house, which led to lodging of the report. It is further stated that the petitioner developed intimacy with another woman and was staying with her. It is further stated that on 09.06.2001 the petitioner consumed alcohol and at about 10.00 PM beat her mercilessly. Pursuant to which, the respondent attempted to commit suicide. It was further stated that the petitioner administered sleeping pills to the respondent and in a semi unconscious state, she informed her parents, who took her to Government Hospital, which was enquired into by the local police. It is also the case of the respondent that in the year 1995, the petitioner filed a divorce petition against the respondent in which the Senior Civil Judge, Gadwal directed the petitioner to take back his wife, and dismissed the petition.

Basing on the above averments, the issue which fell for consideration before the trial Court was whether the petitioner made out a case of cruelty and desertion by the respondent.

In support of his case, petitioner examined himself as P.W.1 and got marked a copy of the judgment in S.C.No.501 of 2010 as Ex.A1 and an order in MC.No.1 of 2002 as Ex.A2. On behalf of respondent, R.Ws.1 to 5 were examined but no documents were marked. The Court below relied upon the evidence of R.Ws.1, 2, 4 and 5, rejected the claim of the petitioner and dismissed the OP. Challenging the same, the present appeal came to be preferred.

3. Heard learned counsel for the appellant-petitioner. In spite of service of notice in the month of February 2018, there is no representation on behalf of the respondent.

4. Learned counsel for the appellant-petitioner mainly submits that having regard to the lapse of time and since the petitioner and respondent have been living separately since last 18 years, there is no possibility of reunion of parties.

5. Situation somewhat identical case to the one hand came up for consideration before a Division Bench of this Court in *KALAPATAPU LAKSHMI BHARATI v. KALAPATAPU SAI KUMAR*¹. In the said case, the parties had been living separately for 14 years and there was no possibility of them living together again. It was also a case where the marriage was irretrievably broken down. In view of the judgments of the Supreme Court in *SAMAR GHOSH v. JAYA GHOSH* [2007 (4) ALD 11 (SC)] and *KOHLI V. NEELU KOHLI* [(2006) 4 SCC 558] the Division Bench held that long time separation itself would lead to mental cruelty. It would be relevant to extract the relevant para of the aforesaid decisions as under:

“11. In the light of the undisputed fact that the parties have been living separately for nearly 14 years, there may be no escape from the conclusion that the marriage has irretrievably broken down. As held by the Supreme Court, a long time separation itself would lead to mental cruelty. Therefore, irrespective of the findings of the lower Court on the failure of the appellant to prove mental cruelty, she is entitled to a decree for dissolution of marriage on the sole reason that there is not possible for reunion of the parties in order to live together. Since the marriage between the parties has irretrievably broken down, any attempt to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties for the rest of their lives.”

¹ 2017 (1) ALD 272 (DB)

6. We feel that the case on hand is identical to the one referred to above. Admittedly both parties are living separately since last 15 years or more. In view of the judgments of the Supreme Court, which was also followed by another Division Bench of this court in KALAPATAPU LAKSHMI BHARATI's case (1 supra) long separation for more than 15 years would lead to mental cruelty irrespective of the finding of the Court below and the failure of the appellant to prove mental cruelty or desertion. Hence, we feel that the appellant is entitled to dissolution of marriage for the reason that there is no possibility for reunion of the parties in order to live together due to mental cruelty. It was also held by the Supreme Court that any effort made to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties.

7. Hence, having regard to the observations made and the findings arrived at, we feel that the appellant is entitled to a decree for dissolution of marriage and the marriage between the appellant-petitioner and the respondent shall stand dissolved.

In the result, the civil miscellaneous appeal is allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

C. PRAVEEN KUMAR, J

T. RAJANI, J

June 21, 2018/DSK