

HON'BLE SRI JUSTICE M.S. RAMACHANDER RAO

AND

HON'BLE SRI JUSTICE K. LAKSHMAN

CIVIL MISCELLANEOUS APPEAL No.1002 OF 2019

JUDGMENT: *(Per Hon'ble Sri Justice K. Lakshman)*

This appeal is filed by the appellant - husband assailing the order dated 02.07.2019 passed by the Principal District Judge at Nalgonda in Divorce O.P. No.174 of 2017 wherein the petition filed by respondent - wife seeking dissolution of marriage, was allowed.

2. The respondent - wife filed an application under Section 10 (ix) & (x) of the Divorce Act, 1869, seeking dissolution of her marriage with the appellant herein vide DOP No.174 of 2017 on the file of Principal District Judge, Nalgonda. According to the respondent - wife her marriage with the appellant - husband was performed on 21.05.1998 at Roman Catholic Mission Church at Peddapalakaluru of Guntur District. They have two children, namely, Gandamalla Chaitanya and Gandamalla Karthik. According to the respondent - wife, the appellant - husband developed strong dislike towards her and used to harass her both physically and mentally, demanding additional dowry. He used to come home late in the night in drunken condition and used to quarrel with her for petty things. She has tolerated the said harassment by keeping her future and her children's future in mind. According to her there was no change in the attitude of the appellant. Losing hope, she stayed at her parents

house since 2001 with her two children. With the intervention of elders in 2002, 2011 and 2013, conciliation proceedings were held, but due to the adamant attitude of the appellant - husband they could not join together. Ultimately, the matter was placed before the elders on 25.02.2013 wherein, with the intervention of elders, both the appellant and respondent arrived at an understanding and the same was reduced in writing under Ex.P.2 notarized agreement dated 25.02.2013. As per the said Ex.P.2, both the parties agreed to lead happy marital life with their children. In the said agreement, the appellant - husband agreed that he will not consume alcohol in future and will not harass his wife and children any more in future.

3. According to the respondent, there was no change in the attitude of the appellant and on the other hand, he has further aggravated his harassment. Ultimately, he left the company of the respondent from the house. The respondent approached the appellant in the month of January, 2014 with a request to join together, reconstitute the conjugal life for which the appellant refused to allow her. Thus, they were staying separately since two years prior to filing of the said OP and the respondent stayed with her parents. Thus, the appellant - husband subjected the respondent - wife to cruelty both physically and mentally and deserted her two years prior to filing of the DOP. On 11.05.2016, the respondent lodged a complaint with the police, Nagarjuna Sagar, but they have not taken any action. According to her all the efforts made by her for restitution of conjugal life with the

appellant - husband failed and therefore, she filed DOP No.174 of 2017 under Sections 10(ix) & (x) of the Divorce Act, 1869 on the file of the Principal District Judge, Nalgonda seeking dissolution of marriage on the grounds of 'cruelty' and 'desertion'.

4. The appellant - husband filed a counter in the said OP denying all the allegations made against him and contended that it is the respondent - wife who used to pick up quarrel with him and he never demanded additional dowry nor he harassed the respondent either physically or mentally as alleged by the respondent. According to him, it is the respondent, who refused to join the conjugal society of the appellant. Though he has accepted to stay with her at the house of her parents, there was no change in the attitude of the respondent-wife. According to him, the respondent filed the above OP with *malafide* intention. He had admitted about the complaint lodged by the respondent on 11.05.2016 and action not being taken against him by the police for the alleged harassment of the respondent. According to him the respondent - wife neglected him and his mother, who was suffering with ill-health. In 2013, the respondent - wife, her parents and others beat the appellant at night time and threw him out of their house. His mother died on 02.10.2017 at his house in Macherla and neither the respondent attended the funeral nor allowed their children to attend the funeral. According to him, it is the respondent who neglected the appellant and his mother and she refused to lead marital

life happily. With the said contentions, the appellant - husband prayed for dismissal of the said O.P.

5. In support of their contentions, the respondent - wife examined PWs.1 to 3 and marked Exs.P.1 to P6 and the appellant - husband examined RWs.1 and 2 and no documents were marked on his behalf. The Principal District Judge, Nalgonda on appreciation of evidence, vide order, dated 02.07.2019 in DOP No.174 of 2017 granted dissolution of the marriage between the appellant - husband and the respondent - wife.

6. Feeling aggrieved by the said order, the appellant - husband filed the present appeal.

7. Heard Sri R. Gopi Mohan, learned counsel for the appellant - husband.

8. From the record, the admitted facts are that the marriage of the appellant and the respondent was performed on 21.05.1998 as per the customs prevailing in their religion i.e. Christianity at Roman Catholic Mission Church, Peddapalikaluru of Guntur District. They were blessed with two children. It is the specific contention of the respondent that the appellant developed strong dislike towards her and used to harass her mentally, physically and economically by demanding additional dowry. He used to come home late hours in the night that too in drunken condition. He used to pick up quarrel for petty things in the drunken condition. She has tolerated the same by

keeping her future and the future of their children in mind. Though the matter was placed before the elders in the year 2002, 2011 and 2013, there was no change in the attitude of the appellant herein. Finally, with the intervention of the elders, they have entered into Ex.P.2 notarized agreement dated 25.02.2013 wherein the appellant herein agreed not to consume alcohol and they will lead their matrimonial life happily. According to the respondent, despite the said agreement, there was no change in the attitude of the appellant and on the other hand, he has further aggravated the said harassment. Finally, he left the company of the respondent and when she specifically requested him in January, 2014 for restitution of conjugal life, he refused for the same. Thus, the appellant deserted the respondent and therefore, she is residing with her parents. Though a complaint was lodged on 11.05.2016 with the police Nagarjuna Sagar, no action was taken by the police against the appellant.

9. The appellant contended that the respondent never cooperated with him and she used to neglect him and his mother, who suffered with ill health and died on 02.10.2017 and that the respondent did not attend the funeral of his mother and she did not even allow their children to attend the said funeral. Though he accepted the demand of the respondent to stay with her at her parents' house, there was no change in the attitude of the respondent. Thus, she has completely neglected the appellant and his mother.

10. During cross-examination, the appellant has admitted about his children staying with the respondent, the Panchayath held in 2013 and also execution of Ex.P.2 notarized agreement dated 25.02.2013 to reside with the petitioner in the Pylon colony and look after the respondent and their children well. The appellant further admitted that he was summoned to the police station on the complaint given by the respondent and the police, Nagarjuna Sagar did not take any action on the same.

11. The appellant examined himself as RW.1 and one Midde Srinivas Rao, his childhood friend as RW.2. By examining the said R.W.2, the appellant tried to prove the allegations made by the respondent as false and even deposition of RW.2 discloses the fact of strained relations between the appellant and the respondent.

12. The respondent examined herself as PW.1, one Mir Hasan Ali, their family friend, as PW.2 and her mother as PW.3. They have deposed specifically about the harassment made by the appellant towards the respondent and also with regard to panchayath held with the elders. They have also deposed about Ex.P.2 settlement and the contents therein. Thus, there are strained relations between the appellant and the respondent.

13. From the above discussion, it is clear that the marriage was performed on 21.05.1998 and they have two children. Thereafter, the relation between the appellant and the respondent got strained. The

record also reveals that because of the harassment meted out by the appellant, the respondent stayed with her parents since 2001. The matter was placed before the elders in 2002, 2011 and 2013, but the appellant refused to join the company of the respondent. Finally Ex.P.2 settlement was entered into between the appellant and the respondent on 25.02.2013. The said facts are not in dispute. As per the contents of Ex.P.2, the appellant admitted that he will not consume alcohol in future and he will live with his wife and children, and that he will not harass his wife in future. The said facts clearly reveal harassment of respondent by the appellant. During cross-examination, the appellant did not elicit anything contra from PWs.1 to 3. The appellant himself examined as RW.1 and his friend as RW.2, but did not prove anything contra to the contentions of the respondent.

14. According to the respondent, she was subjected to cruelty. The Hon'ble Supreme Court considered the term 'cruelty' in **A. Jayachandra v. Anil Kaur**¹ and also in **Smt. Mayadevi v. Jagadish Prasad**² and held that the expression "cruelty" has not been defined in the Hindu Marriage Act, 1955. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of

¹ 2005 (2) SCC 22

² 2007 (3) SCC 136

the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of one spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty.

15. In another judgment reported in **Sujata Uday Patil v. Uday Madhukar Patil**³ the Hon'ble Supreme Court also held that the matter that in construing the language in which the grounds are incorporated the courts should give a liberal construction to it. The courts must give the fullest amplitude of meaning to such a provision. But, it must be meaning which the language of the section is capable of holding.

16. The Supreme Court also considered the word 'cruelty' and the kind or degree of 'cruelty' in the said judgment and held that what is cruel treatment is to a large extent a question of fact or a mixed question of fact and no dogmatic answer can be given to the variety of problems that arise before the court in these kind of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion whereby one gives vent to his or

³ 2007 (2) ALD 45SC

her feelings, without intending to injure the other. It need not consist of direct action against the other but may be misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty may be inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and inference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty.

17. In the very same judgment it was also held by the Supreme Court that Matrimonial disputes have to be decided by courts in a pragmatic manner keeping in view the ground realities. For this purpose a host of factors have to be taken into consideration and the most important being whether the marriage can be saved and the husband and wife can live together happily and maintain a proper atmosphere at home for the upbringing of their offspring. This the court has to decide in the facts and circumstances of each case and it is not possible to lay down any fixed standards or even guidelines.

18. In the case on hand, it is the specific contention of the respondent - wife that she was subjected to harassment, mental, physical and economical by the appellant - husband by demanding additional dowry, he used to come to home late hours in the night in drunken condition and used to pick up quarrel with her on petty issues by throwing the household articles. After all the efforts made by her for restitution of conjugal life including panchayath held by the elders in 2001, 2002, 2011 and 2013 and finally on 25.02.2013 and since there is no change in the attitude of the appellant, she has lodged a complaint with police, Nagarjuna Sagar on 11.05.2016. The said fact was also admitted by the appellant in his deposition. It is also relevant to note here that the respondent - wife after 19 years of matrimonial life filed the above said divorce application No.174 of 2017 seeking dissolution of marriage on the ground of cruelty and desertion. The parties herein are blessed with two children. Even then, the respondent - wife filed the above said divorce application.

19. The above said discussion reveals that the respondent was subjected to cruelty by the appellant. Even it is the specific case of the appellant that the respondent never cooperated with him in leading the matrimonial life happily. In 2013, the respondent, her parents and others beat the appellant at the night time and threw him out of their house. On the advise of the neighbours, he left that place and was living separately by looking after his mother, who died on 02.10.2017. According to him, the respondent neglected him and his mother who

was suffering with ill-health. It is the further contention of the appellant that neither the respondent attended the funeral of his mother nor she allowed their children to attend the same. The said facts clearly establish that there are strained relations and there is no scope of restitution of conjugal life. It is also relevant to note that there is a specific allegation by the respondent that in the month of January 2014, when she requested the appellant for restitution of conjugal life, the appellant bluntly refused and thus, she was staying separately. Though the said fact was admitted by the appellant, he did not initiate any steps by way of filing an application for restitution of conjugal life with the respondent.

20. The respondent was staying with her parents since 2001 at Pylon Colony, Nagarjuna Sagar, Peddavoora Mandal, Nalgonda District. Though the matter was placed before the elders in 2002, 2011 and 2013, the appellant bluntly refused to allow her to join his company. Finally on 25.02.2013, both the appellant and the respondent entered into an agreement - Ex.P.2 on the terms mentioned therein. In Ex.P.2 agreement, dated 25.02.2013, the appellant admitted that he will not harass his wife and children in future and he has agreed to lead happy matrimonial life with his wife and children. According to the respondent, there was no change in the attitude of the appellant even thereafter and on the other hand, he has aggravated the said harassment. The appellant left the respondent at the house of her parents at Pylon Colony, Nagarjuna Sagar. As the appellant

refused to join the conjugal life, the respondent lodged a complaint with the police, Nagarjuna Sagar on 11.05.2016, which fact was also admitted by the appellant. According to her she was staying at her parents' house since two years from the date of filing of the petition.

21. According to the appellant in 2013, the respondent, her parents and others beat him in the night hours and as there was threat to his life, on the advise of the neighbours, he left that place and started living separately and look after his mother till her death on 02.10.2017. Even according to him, neither the respondent attended the funeral of his mother nor allowed their children to attend the said funeral. The said facts would establish that there is desertion of more than two years and the respondent has proved the said desertion beyond reasonable doubt. As discussed above, the appellant did not elicit anything contra to the same from the witnesses examined by the respondent. The appellant also failed to disprove the said allegation of desertion with cogent reasons. On the other hand, his own evidence establishes the said desertion. Thus, the respondent proved both 'cruelty' and 'desertion'.

22. The trial Court, after considering the evidence both oral and documentary, gave a specific finding with regard to both the grounds of cruelty and desertion and allowed the petition filed by the respondent by dissolving the marriage between the appellant and the respondent. We are satisfied with the reasons given by the Court below. Therefore, we do not see any reason to interfere with the

finding of the Court below in the impugned order. Hence, the appeal is liable to be dismissed and accordingly, the same is dismissed.

As a sequel, miscellaneous applications, if any, pending in the appeal shall stand closed.

M.S. RAMACHANDER RAO, J

K. LAKSHMAN, J

03rd December, 2019
KTJ

