

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Family Court Appeal No.243 of 2018

Date: 23.10.2019

Between:

Madhavi Rajapurohit

..Appellant

And

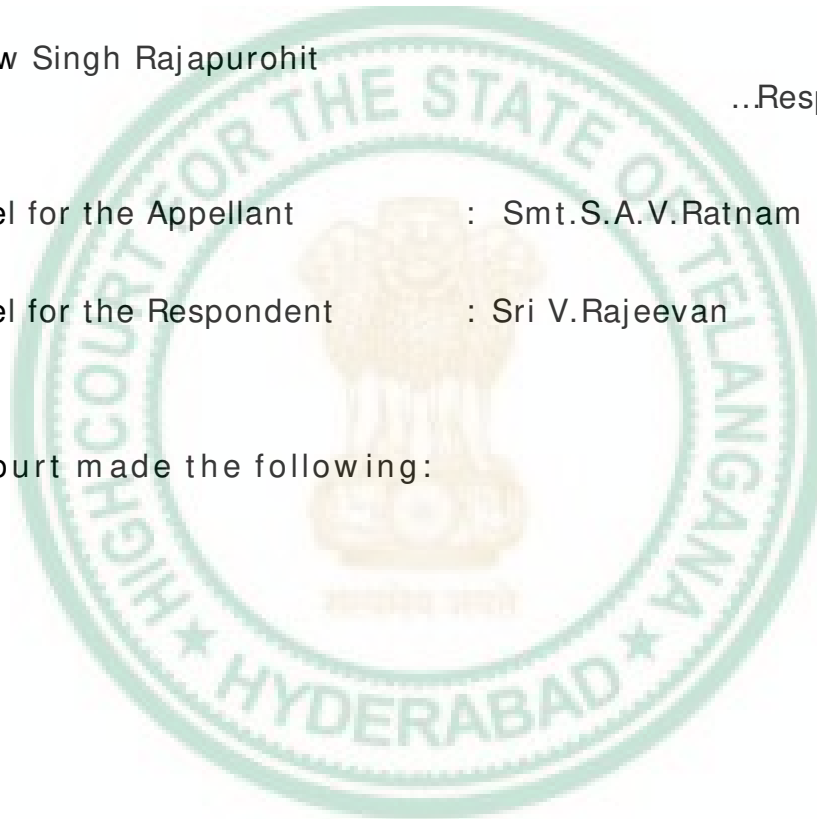
Dariyaw Singh Rajapurohit

..Respondent

Counsel for the Appellant : Smt.S.A.V.Ratnam

Counsel for the Respondent : Sri V.Rajeevan

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

The present Family Court Appeal is filed by the petitioner in F.C.O.P.No.1406 of 2014 on the file of the Principal Judge, Family Court, City Civil Court, Hyderabad, aggrieved by the Order, dated 10.04.2018, passed therein.

2) The brief facts are that the appellant herein has filed O.P.No.1406 of 2014 under Section 13(1)(ia) of the Hindu Marriage Act against the respondent-husband seeking a decree of divorce on the ground of cruelty. The case of the petitioner is that her marriage with the respondent took place on 05.12.1998 at Jagadeesh Temple, Tankbund Road, Hyderabad, as per the Hindu Customs and Rites; the marriage was consummated; the couple was blessed with a daughter on 02.02.2002; she was named as Riya Rajpurohit. Both the petitioner and respondent are Chartered Accountants by profession and their marriage was love marriage. Subsequently, after the marriage, differences arose between the couple. It is the case of the petitioner that the respondent-husband could not secure any permanent job; he used to change his jobs frequently. Further, the petitioner has stated that due to the disparity in the income earned by the petitioner and the respondent respectively, he had developed inferiority complex, and used to get irritated unnecessarily. Thus, he abused her verbally, and manhandled her. Even though they have purchased a house by availing a home loan on the understanding that they will share the E.M.I. equally, the petitioner alone is paying the loan instalments as her husband does not have a permanent job. Further, the petitioner has pleaded that the respondent-husband used to harass her by suspecting her character, and attribute illegal relationship with her male colleagues and fight with her. He also used to quarrel on trivial issues, and loose his temper. On one occasion, he had pulled her

mangalsutram from her neck. Due to this behaviour of the respondent-husband, the petitioner went into depression. She tried to commit suicide. But due to the timely hospitalization, she has survived. The respondent-husband never took any responsibility of running the family, and also used to attribute extra-marital relationship with her client. Due to the incompatibility, their marital life is not conducive and it has irretrievably broken down.

3) In his counter, the respondent-husband denied all these allegations. He claimed that the petitioner was suffering with 'Bipolar disorder'. Consequently, their marital life was not a happy one. As a matter of fact, the petitioner was being treated by a Psychiatrist and was under medication. But the petitioner was irregular in taking the medicines on time. Resultantly, the petitioner used to suffer from bad moods. He, thus, sought for dismissal of the divorce petition.

4) The petitioner herself was examined as PW.1. She got marked Exs.P.1 to P.3; the respondent has examined himself as RW.1, and got marked Exs.R.1 to R.6.

5) The Court below, after going through both the oral and documentary evidence of the parties, has dismissed the petition on the ground that the petitioner has failed to substantiate her claim that the respondent-husband was behaving in an acrimonious manner. Hence, in the absence of any evidence on the specific incidents, or instances of cruelty, the petition filed for divorce on the ground of cruelty cannot be granted. Thereby, the learned Court dismissed the O.P.

6) Heard Smt.S.A.V.Ratnam, the learned Counsel for the appellant, and Sri V. Rajeevan, the learned Counsel for the respondent.

7) Learned counsel appearing for the appellant has vehemently argued that the Court below was not justified in dismissing the O.P. filed by the petitioner; the Court below has ignored the evidence led by the petitioner and without properly appreciating the evidence on record has dismissed the O.P. She further argued that when the marriage between the parties has irretrievably broken down, and there is no chance of re-union between the parties, the Court below ought to have granted the decree for divorce. For, the respondent himself admitted in his cross-examination that there was no relationship of marriage between the parties for more than ten years, among other grounds.

8) On the other hand, the learned Counsel for the respondent submitted that in the absence of evidence to substantiate any specific incident, or instance of cruel acts attributable to the respondent-husband, the Court below was perfectly justified in dismissing the petition. He further submits that the petitioner herself was suffering with 'Bipolar Disorder'. Due to the said illness, she was always suspicious towards the respondent, and did not cooperate with the respondent-husband in leading a happy marital life.

9) We have gone through the record. It is seen from the record that though the petitioner has filed the present O.P. seeking grant of decree of divorce on the ground of cruelty by the husband, she has neither given any specific instances of cruelty by the respondent-husband, nor has led any third party evidence to support her case. As a matter of fact, in the cross-examination of the petitioner, who was examined as PW.1, she has admitted as follows:

It is true that the statement of account of SBI and ICICI bank shown to me that the respondent has transferred certain amounts periodically into my account. It is true that my mother is residing

with me under the same roof along with the respondent even today since the death of my father in the month of October, 2014. It is true my brother – B.Yashwanth stayed with me in the month of July, 2016 for a month to perform the rituals of my father. It is not true to say that my brother B.Yashwanth resided with me and the respondent from the year 2008 to 2011 when he was unemployed. It is true that I have not discussed my matrimonial problems with my mother and my brother prior to filing of this case. It is true that the respondent never asked me or my daughter to go out of the house. It is true that I was treated for the ailment Bi-Polar disease on the force of the respondent. My entire family members and the respondent were with me for a week in Narmada Hospital, Hyderabad, when I underwent treatment for the said ailment of Bi-Polar. I have not mentioned any other dates of cause of action other than the date mentioned in my petition.

10) A bare perusal of the above admissions made by the petitioner clearly shows that there are neither specific details regarding the alleged instances of cruelty by the respondent-husband, nor any independent witness is examined to support the allegations made by the petitioner. When it is the case of the petitioner that the respondent-husband used to quarrel with her, harass her frequently and subject her to cruelty and that her mother and brother used to stay along with them, she could have examined any one of them to support her claim regarding the cruelty meted out to her by the respondent-husband. But, for the reasons best known to the petitioner, she has not chosen to examine either of them.

11) Learned Counsel for the appellant relying on the cross-examination of the respondent-husband as RW.1 wherein he deposed that “the petitioner attempted to commit suicide due to her affair with one

Karanam Narayana, it was known to her brother and mother” submits that the respondent was harassing her mentally by doubting her character, and attributing illegal relationship with one Narayana, which amounts to cruelty. As such, the Court below was not justified in dismissing the O.P. filed for divorce.

12) We are unable to agree with the said contention of the learned counsel for the appellant for the simple reason that any plaint/petition has to win his/her case on the strength of the evidence of plaintiff/petitioner, and not on the lacuna/weakness of the defendant/respondent. In this particular case, the petitioner having alleged that the respondent-husband had harassed her, subjected her to cruelty, manhandled her, abused her, doubted her chastity and attributed illegal relationship, failed to substantiate any of her claims through an independent witness. Even in her cross-examination, she has admitted that she was suffering from Bipolar disorder and taking medication for the same. But she has suppressed the same at the time of approaching this Court. In ***Bharat Singh vs. State of Haryana***¹, the Hon'ble Apex Court held as follows:

13. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not

¹ (1988) 4 SCC 535

entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.

13) That apart, even though the mother and brother of the appellant were staying with her, she has chosen not to get either of them examined in order to support her case. Thus, an adverse inference has to be drawn that they did not support her in filing the petition for divorce, or the allegations made therein against the respondent-husband. In the absence of any cogent and convincing evidence to believe that the allegations made by the petitioner are true, there are no justifiable grounds for interfering with the order of the Court below.

14) The learned Counsel for the appellant has vehemently argued that the marriage between the parties has irretrievably broken down and there is no chance of any re-union between the parties and they are separated and living separately for the last more than 10 years. Hence, the F.C.O.P. should be allowed and divorce be granted. We are unable to agree with the said contention as a decree of divorce cannot be granted on the grounds argued now. In the absence of any legislation to that effect, the Courts cannot grant a decree of divorce on the grounds not available in the statute.

The miscellaneous petitions pending, if any, shall stand closed.
There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

23rd October, 2019
smr