

HON'BLE SRI JUSTICE M.S. RAMACHANDER RAO

AND

HON'BLE SRI JUSTICE K. LAKSHMAN

CIVIL MISCELLANEOUS APPEAL No.1041 OF 2019

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

Feeling aggrieved by the order dated 18.07.2019 in HMOP No.2 of 2018 of Senior Civil Judge, Nirmal, the appellant – husband preferred the present appeal.

2. *Vide* aforesaid order, the Court below allowed the petition filed by the respondent – wife under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act') for restitution of conjugal rights.

3. The contention of the respondent – wife before the Court below was that her marriage with the appellant was performed on 08.05.1998 at Nigwa village of Kubeer Mandal as per Hindu rites and customs. They have blessed with two children out of their wedlock, namely, Vaishnavi and Adarsha. The appellant – husband is a doctor by profession, holding B.H.M.S. degree. According to the respondent – wife both of them lead marital life happily for some time and thereafter, the appellant – husband shifted his practice from Bhainsa to Shivini village, Kinvat Taluqa, Nanded District, Maharashtra. There he became a famous doctor and his practice was very lucrative and he earned lot of money, out of which he has purchased plot and constructed a double storied building in Shivini village. Thereafter, the appellant – husband started demanding Rs.10,00,000/- as

additional dowry on the ground of payment of donation to his daughter for getting MBBS seat. It is also her contention that the appellant – husband started suspecting her fidelity and finally on 05.08.2016 she was driven out from the matrimonial house and since then she has been staying with her parents at Nigwa village. She also alleged bigamy and according to her the appellant – husband married one Preethi Wadke.

4. The appellant – husband filed his counter in the said OP denying the allegations leveled by the respondent – wife. According to him, the respondent – wife started neglecting him and children and that she developed extra marital affair with their neighbour. That though the appellant filed a complaint against the said neighbour there is no change in the attitude of the respondent – wife. He further contended that he has filed a petition seeking dissolution of marriage on the file of the Senior Civil Judge, Nanded vide HMOP No.119 of 2016 under Section 13 (1) (i) (i-a) of the Hindu Marriage Act, 1955, and the same is pending. With the above contentions, the appellant – husband prayed for dismissal of the OP.

5. To prove their contentions, the respondent – wife examined herself as PW-1 and the appellant – husband examined himself as RW-1. They have not filed any documents. The Court below, on consideration of the evidence, allowed the said OP *vide* order dated 18.07.2019 directing the appellant – husband to receive the respondent – wife to his conjugal society to lead conjugal life

peacefully. Aggrieved by the said order, the appellant – husband preferred the present appeal.

6. Heard Mr. A. Jagan, learned counsel appearing for the appellant – husband.

7. On perusal of the entire record, the admitted facts are that the marriage of the appellant and the respondent was performed on 08.05.1998 and they blessed with two children, namely, Vaishnavi and Adarsha. Admittedly, their daughter Vaishnavi is now prosecuting MBBS course.

8. The appellant – husband made an allegation of adultery against the respondent - wife, but no evidence was let in before the Court below on the said aspect. Likewise, the respondent - wife made an allegation of bigamy against the appellant - husband and she also did not let in any evidence before the Court below. There is no finding by the trial Court with regard to the said adultery and bigamy alleged by the parties against each other.

9. It is also an admitted fact that the appellant – husband filed HMOP No.119 of 2016 on the file of the Senior Civil Judge, Nanded, Maharashtra, against the respondent and one Raju seeking dissolution of marriage on the ground of adultery and the said OP is pending. It is relevant to note that the appellant – husband did not take any steps to get the said HOP No.119 of 2016 clubbed with the present HMOP No.2 of 2018 by seeking transfer. On perusal of the said petition filed

by the appellant – husband, the date of filing was 18.10.2016, whereas the respondent – wife filed the present petition on 29.12.2017. The appellant – husband filed counter in OP No.2 of 2018 on 08.06.2018. It appears from the counter that the appellant – husband mentioned about filing of the OP by him, but he did not mention the name of the Court, particulars of said OP etc. As stated above, he did not even take any steps for getting both the OPs., clubbed by way of transfer. The said conduct on the part of the appellant – husband creates doubt and his evidence is not trustworthy.

10. However, the court below by considering the entire evidence and material available on record, allowed the said OP filed by the respondent – wife directing the appellant – husband to receive the respondent – wife to his conjugal society. There is a categorical finding by the trial Court in the impugned order about the admission of appellant – husband during cross examination that he is not ready and willing to receive the respondent – wife to his conjugal society and the suggestion which is placed before RW-1 would go to suggest that the respondent-wife is willing to join the society of the appellant – husband.

11. It is also relevant to mention that in HOP No.119 of 2016 filed by the husband seeking dissolution of marriage also, he has stated that on 08.09.2016, the appellant – husband called the respondent –wife on phone and requested her to come and cohabit with him, but the respondent – wife refused to come and cohabit

with the appellant – husband. The said evidence clinchingly establishes that they are not living together. It is the specific contention of the respondent – wife that the appellant – husband without reasonable excuse withdrawn her society on 05.10.2016. It is the specific contention of the respondent – wife from the beginning that she is ready and willing to join the company of the appellant – husband. It is the appellant – husband who has withdrawn from her conjugal society without there being any reasonable excuse.

12. As discussed above, though the respondent – wife and appellant – husband made serious allegations of bigamy and adultery, there is no finding by the trial Court in the impugned order. However, HOP No.119 of 2016 filed by the appellant – husband seeking dissolution of marriage is admittedly pending before the Senior Civil Judge, Nanded for adjudication. Moreover, the parties herein have blessed with two children and their daughter is studying Medicine. The appellant is aged about 47 years and the respondent is aged about 38 years and they have grown up children.

13. In view of the above said discussion and the specific finding by the trial Court that it is the appellant – husband who has withdrawn from the conjugal society of the respondent - wife without there being any reasonable excuse, we see no ground that warrants interference of the impugned order passed by the Court below. We are satisfied with the reasons given by the Court below. 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 dismissed.

M.S. RAMACHANDER RAO, J

K. LAKSHMAN, J

03rd December, 2019
KTJ

