

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA
CIVIL MISCELLANEOUS APPEAL No.1462 of 2008

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Civil Miscellaneous Appeal, under Section 28 of the Hindu Marriage Act, 1955 (for short 'the Act') is filed by the appellant/husband, challenging the order and decree, dated 05.02.2003, passed in O.P.No.52 of 2000 by the Senior Civil Judge, Karimnagar, whereby, the subject O.P.No.52 of 2000 filed by the appellant/husband under Section 13(1)(ib) of the Act seeking divorce between the parties, was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. Learned counsel for the appellant/husband would contend that since more than two decades, both the parties are living separately. Though there is desertion by the respondent/wife and the same was proved by leading cogent and convincing evidence, the Court below did not consider the same and dismissed the subject O.P. Further, the love and affection between the parties had completely dried up. There are no chances of reunion. Both

the parties are living separately. Moreover, there are no efforts from either side to get the parties together to lead marital life. The marriage in between the parties is irretrievably broken down and ultimately prayed to set aside the impugned order and allow the appeal by dissolving the marriage performed in between the parties.

4. On the other hand, learned counsel for the respondent/wife would contend that though there are allegations of desertion on the part of the respondent/wife, there is no substantial evidence to prove the same. The Court below was pleased to examine the same and held that there was no evidence of desertion on the part of the respondent/wife. The Court below is justified in dismissing the subject O.P. and ultimately prayed to dismiss the appeal.

5. In view of the above rival submissions, the points that arise for determination in this appeal are as follows:

- 1. Whether the appellant/husband is entitled for dissolution of marriage, as prayed for?*
- 2. Whether the impugned order, dated 05.02.2003, passed in O.P.No.52 of 2000 by the Senior Civil Judge, Karimnagar, is liable to be set aside?*

POINTS:-

6. The material placed on record reveals that the marriage in between the appellant/husband and the respondent/wife was performed in the year 1987 as per Hindu rites and customs. The subject O.P. for dissolution of marriage between the parties was filed in the year 2000. Much before filing of the subject O.P., both the parties are living separately. There is consistent and corroborating evidence of P.Ws.1 and 2 to that effect. P.W.1, in his evidence, has clearly stated that the respondent/wife attributed impotency to the appellant/husband. Negotiations in between the parties were made in the year 1993 for amicable settlement to get back the respondent/wife to the company of the appellant/husband. There is evidence of P.Ws.1 and 2 to that effect. When the respondent/wife was asked to join the company of the appellant/husband, she refused to do so. So, it is clear from the evidence of P.Ws.1 and 2 that from the year 1993, both the parties are living separately. As the parties are living separately for more than two decades, the passion, love and affection between the parties are dried up. There are no chances of negotiations and reunion between the parties. Here, in the

circumstances of the case, it is appropriate to refer to the decision rendered in Naveen Kohli Vs. Neelu Kohli¹.

7. In Naveen Kohli Vs. Neelu Kohli's case (supra), a three-Judge Bench of the Hon'ble Apex Court observed as follows:

"Once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties."

8. The Hon'ble Apex Court, in a catena of judgments, has exercised its inherent powers under Article 142 of the Constitution of India for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted.

9. In the instant case, in view of the facts and circumstances of the case, we are convinced beyond any doubt that the marriage between the parties to the litigation is totally unworkable, emotionally dead, beyond salvage and has broken down

¹ (2006) 4 SCC 558

irretrievably and as such, it necessitates severance of marital tie between the parties on the ground of irretrievable break down of marriage.

10. Accordingly, the Appeal is allowed by setting aside the impugned order, dated 05.02.2003 passed in O.P.No.52 of 2000 by the Senior Civil Judge, Karimnagar. The marriage performed in between the appellant/husband and the respondent/wife in the year 1987 stands dissolved by a decree of divorce.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

Date: 09.11.2022
ssp