

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

CIVIL MISCELLANEOUS APPEAL No.298 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/wife, aggrieved by the order and decree, dated 22.02.2008, passed in O.P.No.6 of 2006 by the learned Senior Civil Judge, Siddipet, whereby, the subject O.P. filed by the respondent/husband, under Section 13(1)(ia)(ib) of the Act, seeking divorce, was allowed granting decree of divorce by dissolving the marriage performed between the parties on 20.05.1990.

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

3. Learned counsel for the appellant/wife would contend that the conclusions reached by the Court below are against the weight of evidence and probabilities of the case. The respondent/husband did not prove that there was cruelty as well as desertion on the

part of the appellant/wife. The findings recorded by the Court below are not in consonance with the pleadings. There is no documentary evidence to substantiate cruelty or desertion on the part of the appellant/wife. The Court below without there being any substantial evidence on record dissolved the marriage performed between the parties. The evidence of PWs.2 to 4 is not trustworthy or credible. Though there is evidence of RWs.1 to 3 to substantiate that the respondent/husband was guilty of malfunctioning, the Court below did not consider the same and erroneously allowed the subject O.P. granting divorce and ultimately, prayed to set aside the impugned order and decree and dismiss the subject O.P.

4. On the other hand, learned counsel for the respondent/husband would contend that several instances of cruelty and desertion were pleaded and substantiated by leading cogent and convincing evidence. The Court below, having analysed the entire evidence on record, was pleased to allow the subject O.P. dissolving the marriage performed between the parties. There is also substantial evidence to prove that the appellant/wife was

quarrelling with the respondent/husband on petty matters. There are also allegations of appellant/wife developing illegal contacts with somebody and getting the respondent/husband beaten by unsocial elements. There is also substantial evidence to show that a false criminal case under Section 498A I.P.C. was filed against the respondent/husband. There is clear and cogent evidence of PWs.2 to 4, to substantiate cruelty and desertion on the part of the appellant/wife. There is no merit in the appeal and ultimately, prayed to dismiss the same.

5. In view of the above rival submissions made by the learned counsel for both sides, the points that arise for determination in this appeal are as follows:

- “1. Whether there was cruelty and desertion on the part of the appellant/wife?
2. Whether the impugned order and decree, dated 22.02.2008, passed in O.P.No.6 of 2006 by the learned Senior Civil Judge, Siddipet, are liable to be set aside?”

POINTS:

6. It is not in dispute that the marriage in between the appellant/wife and the respondent/husband took place on 20.05.1990 at Dumpalapalli Village of Dubbak Mandal. During

their wedlock, the couple were blessed with two children. Due to strained relations between the parties to the litigation, they were living separately. The respondent/husband to substantiate cruelty and desertion on the part of the appellant/wife examined himself as PW.1 and also got examined PWs.2 to 4. On behalf of the appellant/wife, she deposed as RW.1 and also got examined RWs.2 and 3. No documents were marked on behalf of either of the parties. The evidence of PW.1 (respondent/husband) reveals that the parties to the litigation were living separately since 1994 and the evidence of RW.1 (appellant/wife) reveals that the parties were living separately since eight years prior to her deposition. Further, a criminal case, under Section 498A I.P.C., was registered against the respondent/husband and he was convicted for the said offence by the trial Court, but subsequently, he was acquitted by the appellate Court. Registration of a criminal case against the respondent/husband and he being ultimately acquitted, certainly causes mental cruelty and harassment. Several instances of cruelty and desertion on the part of the appellant/wife were brought on record in the course of evidence adduced on behalf of the respondent/husband. The Court below, having examined the

entire oral evidence on record, held that there was cruelty and desertion on the part of the appellant/wife, which satisfies the requirements under Section 13(1)(ia)(ib) of the Act. Apart from that, as the parties to the litigation were living separately for more than two decades, the relation, passion, love and affection between the parties to the litigation are dried up. Further, as per the evidence on record, the situation has reached to the stage of irretrievable breakdown of marriage and there was no chance of reunion or re-establishment of marital life between the parties.

7. Here, it is apt to state that irretrievable breakdown of marriage by itself is not a ground for divorce under the Hindu Marriage Act, 1955. But where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the Courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others, necessitating severance of marital tie. A marriage, which is dead for all purposes, cannot be revived by the Court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up, there is

hardly any chance of their springing back to marital life on account of artificial reunion created by the Court's decree. Courts can dissolve a marriage as irretrievably broken down when the Court is convinced beyond any doubt that there is absolutely no chance of the marriage surviving and it is broken beyond repair.

8. In ***Naveen Kohli v. Neelu Kohli***¹, 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.

9. The Hon'ble Apex Court, in a series 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

¹ (2006) 4 Supreme Court Cases 558

granted (see **Samar Ghosh Vs. Jaya Ghosh**²; **Sukhendu Das Vs. Rita Mukherjee**³).

10. In the instant case, there is ample evidence on record proving cruelty and desertion on the part of the appellant/wife. Further, the marriage between the parties is emotionally dead, totally unworkable, beyond salvage and has broken irretrievably, as discussed above. Therefore, we are of the considered opinion that the Court below rightly dissolved the marriage performed between the parties *vide* the impugned order and decree. The contentions raised on behalf of the appellant/wife do not merit consideration. There are no circumstances to vary the impugned order and decree. The appeal is lacking merits and is liable to be dismissed.

11. Accordingly, the appeal is dismissed confirming the order and decree, dated 22.02.2008, passed in O.P.No.6 of 2006 by the learned Senior Civil Judge, Siddipet.

² (2007) 4 Supreme Court Cases 511

³ (2017) 9 Supreme Court Cases 632

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: 08-11-2022
MD