

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA
CIVIL MISCELLANEOUS APPEAL No.317 OF 2007**

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

This Civil Miscellaneous Appeal, under Section 28 of the Hindu Marriage Act, 1955, is filed by the appellant/wife, challenging the judgment, dated 12.02.2007, passed in O.P.No.136 of 2005 by the Senior Civil Judge, Karimnagar, whereby, the subject O.P.No.136 of 2005 filed by the respondent/husband under Sections 13(1)(ia)&(ib) of the Hindu Marriage Act against the appellant/wife for divorce on the ground of cruelty and desertion, was allowed, dissolving the marriage between appellant/wife and respondent/husband.

2. We have heard the submissions of Ms.B.Sai Bindu learned counsel, representing Sri S.Satyam Reddy, learned counsel for the appellant/wife and perused the record.

3. Though the respondent/husband entered appearance in this case, there is no representation on his behalf.

4. Learned counsel for the appellant/wife would submit that the findings recorded by the Court below are against the evidence on record. There is no evidence to substantiate that the

appellant/wife had subjected the respondent/husband to cruelty and deserted him. The marriage in between the appellant/wife and respondent/husband was performed on 23.06.1975 and the couple cohabited for about 25 years. During their wedlock, they were blessed with three daughters and one son. The respondent/husband has performed marriage of two daughters by giving dowry and also kept an amount of Rs.3,00,000/- in fixed deposit in the name of his third daughter for the purpose of performing her marriage. Though there is no evidence with regard to alleged desertion and cruelty on the part of the appellant/wife, the Court below erroneously granted divorce in between the parties to the litigation. The appellant/wife is ready and willing to join the company of the respondent/husband. The reasons assigned by the Court below in dissolving the marriage between parties are untenable. The findings recorded by the Court below are not in consonance with the mandate given under Section 13(i)(ia) & (ib) of the Hindu Marriage Act and ultimately, prayed to set aside the under order challenge and allow the appeal.

5. In view of the above submissions, the point that arises for determination in this appeal is as follows:

“Whether the Court below is justified in granting divorce in between the appellant/wife and the

respondent/husband vide impugned order, dated 12.02.2005, passed in OP.No.136 of 2005?"

POINT:-

6. Before the Court below, the appellant/wife herself was examined as RW.1, besides examining RW.2, and the respondent/husband was examined as PW.1. The material placed on record reveals that the marriage in between the parties took place on 23.06.1975. The parties stayed together for a period of 25 years and they begotten three daughters and one son. The respondent/husband had performed marriage of his two daughters by giving dowry and also kept an amount of Rs.3,00,000/- in a fixed deposit in the name of his third daughter for the purpose of performing her marriage. The respondent/husband was suffering from defective eye sight from several years. On that score, he was harassed mentally by the appellant/wife by insulting him and calling him as a blind man.

7. It is also evident from the record that the appellant/wife has also filed a criminal case for the offence under Section 498A of IPC against the respondent/husband. The appellant/wife had also filed a suit through her daughters for partition of the properties of the respondent/husband. She also made a criminal complaint against

the respondent/husband alleging that on 19.09.2004, the respondent/husband and another person voluntarily caused hurt and tried to kill her due to land disputes between her children and the respondent/husband. Basing on the said complaint the police concerned registered the case in C.C.No.174 of 2006 on the file of Special Judicial Magistrate of First Class (PCR), Karimnagar, for the offences under sections 323, 506 and 427 read with 34 of IPC. Though several Panchayats were held to settle the disputes in between the parties, they did not fructify. Further, allegations of the respondent/husband getting addicted to vices like consuming alcohol etc., were made against the respondent/husband by appellant/wife.

8. There is no denial by the appellant/wife with regard to the deposit of money made by the respondent/husband in the name of his third daughter for the purpose of her marriage, so also performing the marriage of his first and second daughters by giving dowry. In the counter filed on behalf of the appellant/wife also, several allegations were made against the respondent/husband such as his suspension and termination from his employment etc. It is also alleged by the appellant/wife in the counter that the respondent/husband was addicted to vices and

started mismanaging the agricultural property and used to waste the income derived from the family properties.

9. It is an admitted fact that the appellant/wife and the respondent/husband have been living separately for more than two decades. The Court below, after analyzing the evidence on record, opined that there is no possibility of the parties leading happy marital life and that it is not justifiable to keep the marriage ties between them in existence only for the name sake, in view of the cases pending against them. Filing of complaints with the police with serious allegation would certainly amount to mentally and physical cruelty. As seen from the evidence placed on record, there are no chances of re-union between the parties. All these circumstances establish that the appellant/wife subjected the respondent/husband to cruelty and deserted him.

10. Be that as it may. It is an undisputed fact that due to irreconcilable differences, the parties are living separately for more than two decades. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. In the instant case, we feel that the differences between the parties to the litigation are of

such magnitude that it would be practically impossible for them to reunite and cohabit again.

11. 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.

12. 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

¹ (2006) 4 Supreme Court Cases 558

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.

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

14. In the instant case, the Court below analyzed the whole evidence in correct perspective and arrived at a conclusion that the appellant/wife treated the respondent/husband with cruelty and deserted him. The view taken by the Court below is based on material evidence on record. We find no infirmity or illegality in the impugned order, so as to vary the same. In addition to that, the marriage between the parties is emotionally dead, totally unworkable, beyond salvage and has broken down irretrievably.

² (2007) 4 Supreme Court Cases 511

³ (2017) 9 Supreme Court Cases 632

These two grounds are sufficient to dissolve the marriage in between the parties. The appeal lacks merit and is liable to be dismissed.

15. Accordingly, the Civil Miscellaneous Appeal is dismissed.

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

22nd November, 2022
DSU / BVV