

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

CIVIL MISCELLANEOUS APPEAL No.2567 of 2003

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

This appeal, under Section 19 of the Family Courts Act, 1984, is filed by the appellant/husband, challenging the order and decree, dated 18.03.2003, passed in O.P.No.230 of 2002 by the learned Judge, Family Court, Hyderabad, whereby, the subject O.P. filed by the appellant/husband under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, for dissolution of marriage performed between the appellant/husband and the respondent/wife on 05.10.1995, was dismissed.

2. Heard the learned counsel for the appellant/husband, learned counsel for the respondent/wife and perused the record.

3. Learned counsel for the appellant/husband would contend that the marriage between the appellant/husband and the respondent/wife was performed on 05.10.1995 at Hyderabad as per Hindu rites and caste customs. During their wedlock, they were blessed with a daughter, by name, Niharika, on 28.09.1997. Thereafter, his in-laws started pressuring him to invest money in the name of the respondent/wife and his daughter. Though the

appellant/husband invested huge amounts, they have not satisfied with the same and started troubling the appellant/husband. Though there is sufficient evidence proving the cruelty on the part of the respondent/wife, the Court below did not advert to the same and erroneously declined to grant a decree of divorce between the parties. The respondent/wife left the matrimonial house on 24.04.1999. The in-laws of the appellant/husband refused to send the respondent/wife and her daughter to his house. The appellant/husband and the respondent/wife are living separately since 23 years. There are no efforts from either side to continue the marital life. The marriage between the parties has broken down beyond repair. All emotions are dead and the subject marriage has become unworkable. Hence, it is a fit case to dissolve the marriage in between the appellant/husband and the respondent/wife and ultimately, prayed to allow the appeal as prayed for.

4. On the other hand, learned counsel for the respondent/wife would contend that the parties have grown up daughter and the appellant/husband is visiting his daughter and conceded that the parties are living separately for decades. There is no possibility of reunion in between the parties. There is no cruelty on the part of

the respondent/wife. Further, the appellant/husband failed to establish cruelty alleged to have been meted out to him by the respondent/wife. Hence, the Court below is justified in dismissing the subject O.P. and ultimately, prayed to dismiss the appeal by confirming the order under challenge.

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 performed between him and the respondent/wife as prayed for?*
2. *Whether the impugned order and decree, dated 18.03.2003, passed in O.P.No.230 of 2002 by the learned Judge, Family Court, Hyderabad, are liable to be set aside?*

POINTS:-

6. The material placed on record reveals that the marriage between the appellant/husband and the respondent/wife was performed on 05.10.1995 at Hyderabad as per Hindu rites and caste customs. They were blessed with a daughter, by name, Niharika on 28.09.1997. Both the parties are living separately since 1999. It is an undisputed fact that due to irreconcilable differences, the parties are living separately from the last twenty three years. The appellant/husband filed the subject O.P. seeking

divorce against the respondent/wife on the grounds of cruelty and desertion. On the other hand, the respondent/wife disputed the same. Further, the daughter of both the parties had attained the age of majority by this time. 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.

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

¹ (2006) 4 Supreme Court Cases 558

² (2007) 4 Supreme Court Cases 511

³ (2017) 9 Supreme Court Cases 632

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

11. Accordingly, this appeal is allowed, by setting aside the impugned order and decree, dated 18.03.2003, passed in O.P.No.230 of 2002 by the learned Judge, Family Court, Hyderabad. The marriage performed in between the appellant/husband and the respondent/wife on 05.10.1995 stands dissolved by a decree of divorce, under Section 13(1)(ib) of the Hindu Marriage Act, 1955.

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: 10.11.2022
PSA/SSP