

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

FAMILY COURT APPEAL No.23 of 2011

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

The Family Court Appeal, under Section 19 (1) of Family Courts Act, 1984 is filed by the appellant/wife, challenging the order, dated 23.10.2010, passed in F.C.O.P.No.1061 of 2008 by the Judge, Family Court, Hyderabad, whereby, the subject F.C.O.P No.1064 of 2008 is filed by the respondent/husband, under Section 13(1) (ia) and (ib) of Hindu Marriage Act, 1955 seeking divorce on the grounds of cruelty and desertion, was allowed.

2. We have heard the submissions of Smt Ramani Jonna, learned counsel for the appellant/wife, Sri S.V.Ramana, learned counsel for the respondent/husband and perused the record.

3. The learned counsel for the appellant/wife would contend that the Court below did not consider the evidence of RW.1 and RW.2, which clearly demonstrate that the appellant/wife was willing to join the company of the respondent/husband and she has clear intention to lead matrimonial life. Earlier, when the appellant/wife approached the respondent/husband to join his company, he did not accept the same. The Court below failed to

appreciate that the provisions of Section 13(1)(ia), 13(1)(ib) of Hindu Marriage Act, are not made out against the appellant/wife. The Court below, recording a specific finding that there was no cruelty and desertion on the part of the appellant/wife on the one hand, erroneously dissolved the marriage in between the parties. The Court below had erroneously placed reliance in the decision relied on by the respondent/husband reported in **C.Chandra Shobha vs. N.Vimala Prasad**¹ to arrive at a conclusion. It is also contended that since appellant/wife is residing in the residential house of the respondent/husband from 2001 onwards, there are bright chances of reunion between the parties. The marriage between the parties has not irretrievably broken down. In the given circumstances, the Court below ought not have arrived at a conclusion that continuation of marriage between the couple would itself amount to cruelty and that there was no chance of saving the marriage in between the parties. The findings recorded and the conclusions reached by the Court below are erroneous and ultimately, prayed to set aside the impugned order and allow the appeal as prayed for.

4. *Per contra*, the learned counsel for respondent/husband would contend that both the parties are living separately for the

¹ 2009 (3) ALT, page 47

past seven and half years. There is cogent and convincing evidence on record to substantiate that the respondent/husband was subjected to cruelty by the appellant/wife. The learned counsel, while brining certain aspects to the notice of this Court in relation to earlier marriage of the appellant/wife etc., further contended in the facts and circumstances of the case, there is no possibility of reunion between the parties. Though the appellant/wife came to the house of the respondent/husband on the occasion of their son's marriage and continued to reside therein, even then, there is no hope of reunion between the couple. In view of the past conduct etc., of the appellant/wife, the Court below rightly held that the appellant/wife subjected the respondent/husband to cruelty and deserted him. Further the Court below, placing reliance over the decision rendered in **C.Chandra Shobha's** case *supra*, rightly granted divorce between the parties. The relationship between the parties had deteriorated to such an extent that it would be practically impossible for them to live together without mental agony, torture or distress. The contentions raised on behalf of the appellant/wife are untenable and ultimately, prayed to dismiss the same.

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

“Whether the Court below is justified in dissolving the marriage in between the parties vide impugned order, dated 23.10.2010, passed in O.P.No.1061 of 2008 by the Judge, Family Court, Hyderabad?”

POINT:-

6. The material placed on record reveals that the marriage in between the appellant/wife and the respondent/husband was performed on 02.09.1998 as per the Hindu Customs and Rites at Teeparuru Village, Peraveli Mandal, West Godavari District. There are certain allegations against the appellant/wife that at the age of 14 years, she eloped with one Jujjavarapu Suryanarayana and after enquiry, the parents of the appellant/wife traced her and brought her back. Thereafter, she got married to one Narsimha Murthy of Mandapakam Village and she lived with that person from 1980 to 1982, and their marriage ended in divorce and later, the appellant/wife married the respondent/husband. Even thereafter, it is alleged that the appellant/wife developed illicit intimacy with one Ramakrishna and also with a person by name Praveen. As per the evidence on record, both the parties are living separately from seven and half years prior to filing of the subject OP and there was no physical relationship in between them. No marital obligations

were discharged by any of them and they failed to honour the marriage performed between them. The subject OP was filed in the year 2008 and since then, there was no reunion in between the parties. There are grave and serious allegations against each other. There are also allegations against the appellant/wife with regard to conduct and character. All the facts and circumstances taken together, probabalise the allegations of the respondent/husband that the appellant/wife had treated him with cruelty and deserted him. Under these circumstances, the Court below while placing reliance over the decision rendered in **C.Chandra Shobha's** case supra, is justified in holding that it would not be safe to continue the matrimonial life between the parties. True it is, appellant/wife came to the house of respondent/husband on the occasion of their son's marriage and continued to reside therein. Even then, no bond has been developed between the couple and the respondent/husband is not willing to cohabit again with the appellant/wife.

7. The material placed on record reveals that the appellant/wife deserted the respondent/husband for seven and half years prior to filing of the subject OP and it is being continued till date. Therefore, in all, the appellant/wife deserted the respondent/husband for 20 long years, which, in the considered

opinion of this Court, is a ground to grant divorce under Section 13(1)(ib) of Hindu Marriage Act. Though the Court below had recorded a finding that the respondent/husband failed to establish cruelty on the part of the appellant/wife, but the fact remains that the respondent/husband had proved cruelty and desertion on the part of the appellant/wife, which is sufficient to dissolve the marriage in between the parties.

8. 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.

9. 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.

10. In ***Naveen Kohli v. Neelu Kohli***², 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.

11. 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

² (2006) 4 Supreme Court Cases 558

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**³; **Sukhendu Das Vs. Rita Mukherjee**⁴).

12. In the instant case, since the respondent/husband successfully proved cruelty and desertion and further the marriage between the parties is emotionally dead, totally unworkable, beyond salvage and has broken irretrievably as discussed above, We are of the considered opinion that the Court below rightly dissolved the marriage performed in between the parties. In view of these facts and circumstances, it is not a fit case to reverse the order of the Court below. The appeal is devoid of merit and is liable to be dismissed.

13. Accordingly, the Family Court Appeal is dismissed, confirming the order, dated 23.10.2010, passed in O.P.No.1061 of 2008 by the Judge, Family Court, Hyderabad.

³ (2007) 4 Supreme Court Cases 511

⁴ (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

23rd November, 2022

PNS / BVV