

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA
CIVIL MISCELLANEOUS APPEAL No.1125 OF 2006**

JUDGMENT: (Per Hon'ble Dr.SA,J)

This appeal, under Section 28 of the Hindu Marriage Act, 1955 (for short, 'the Act') is filed by the appellant/ husband aggrieved by the order and decree, dated 01.11.2006, passed in O.P.No.62 of 2001 by the learned Senior Civil Judge, Karimnagar, whereby, the subject O.P. filed by the appellant/husband, under Section 13(1)(ia) & (ib) of the Act, seeking dissolution of the marriage solemnized between him and the respondent/wife on 17.12.1993, was dismissed.

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

3. In spite of service of notice, there is no representation on behalf of the respondent/wife.

4. Learned counsel for the appellant/husband would submit that the marriage between the parties was solemnized on 17.12.1993 at Laxminagar, Karimnagar, as per Hindu Rites. The marriage was consummated and the parties begot a female child. After giving birth to a female child, the respondent/wife started picking up quarrels with the appellant/husband on petty issues. The appellant/husband was continuously insulted, harassed and beaten by the respondent/wife. There are several other instances of cruelty meted out by the appellant/husband in the hands of the respondent/wife. The evidence of PW.2 substantiates that the respondent/wife treated the appellant/husband with cruelty and deserted him. The evidence of PW.2 corroborates the evidence of PW.1. Though one Chinthakindi Venkatesham deposed as RW.2 on behalf of the respondent/wife, he is not a direct witness to any of the circumstances. There is cogent and convincing evidence on record to substantiate that the appellant/husband was subjected to cruelty by the respondent/wife. In spite of the same, the Court below had

erroneously dismissed the subject O.P. Further, both the parties are living separately from 08.02.2001 onwards. There are no chances of reunion between the parties. The passions and affections between the parties dried up. The marriage between the parties is irretrievably broken down and ultimately, prayed to set aside the impugned order and decree and allow the appeal by dissolving the marriage performed between the parties.

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

“Whether the impugned order and decree, dated 01.11.2006, passed in O.P.No.62 of 2001 by the learned Senior Civil Judge, Karimnagar, are liable to be set aside.”

POINT:

6. The material placed on record reveals that the marriage between the appellant/husband and the respondent/wife was solemnized on 17.12.1993 at Laxminagar, Karimnagar, as per Hindu Rites. The marriage was consummated and the parties begot a female child. There is specific evidence of the

appellant/husband (PW.1) that on several occasions he was insulted and beaten by the respondent/wife in the presence of his family members. PW.2, who is a neighbour of the appellant/husband, supported the case of the appellant/husband. His evidence also demonstrates that there were cruel acts on the part of the respondent/wife. The Court below, while dealing with the subject matter observed that the respondent/wife is thin and the appellant/ husband is fat and therefore, it is not possible to the respondent/wife to beat the appellant/husband. It is to be noted that the Court has to go by the evidence on record, but not on the surmises and assumptions. It is not that a lean woman cannot beat a fat man. Further, the parties to the litigation were living separately from the year 2001 onwards. There are no efforts by either side for reunion of the parties. As per the evidence and material placed on record, all emotions between the parties are dead and the marriage has become unworkable. There is no remote possibility of reunion between the parties to the litigation.

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 life on account of artificial reunion created by the Court's decree.

8. It is settled law that the Court grants a decree of divorce only in those situations in which the Court is convinced beyond any doubt that there is absolutely no chance of the marriage surviving and it is broken beyond repair. Even if there are minute chances of survival of

marriage, it is not for the Court to use its power to dissolve the marriage as having broken down irretrievably.

9. In **Naveen Kohli Vs. 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."

10. 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

¹ (2006) 4 SCC 558

Samar Ghosh Vs. Jaya Ghosh²; Sukhendu Das Vs. Rita Mukherjee³).

11. In the instant case, as seen from the oral and documentary evidence and other material placed on record, both the parties to the litigation were living separately from the year 2001 onwards. The marriage between the parties has broken down beyond repair. There is no chance of reunion between the parties to the litigation. The marriage has become only fiction. It is only a legal tie. It is unrealistic for law not to take notice to the said fact. If the parties are allowed to continue the marital tie, it will certainly have an adverse bearing over the interest of the parties and over the society. The marriage between the parties is irretrievably broken down. Therefore, it is not appropriate to refuse to sever the marital tie between the parties. Apart from the said circumstances, there is evidence substantiating cruelty and desertion on the part of the respondent/wife. Under these circumstances, we deem it appropriate to dissolve the

² (2007) 4 Supreme Court Cases 511

³ (2017) 9 Supreme Court Cases 632

marriage performed between the parties by granting a decree of divorce.

12. Accordingly, the appeal is allowed by setting aside the impugned order and decree, dated 01.11.2006, passed in O.P.No.62 of 2001 by the learned Senior Civil Judge, Karimnagar. Consequently, the subject O.P. stands allowed and the marriage performed between the appellant/husband and the respondent/wife on 17.12.1993 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: 08.11.2022
MD