

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

FAMILY COURT APPEAL No.60 of 2013

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

This appeal, under Section 19 of the Family Courts Act, is filed by the appellant/husband, challenging the order and decree, dated 11.10.2010, passed in H.M.O.P.No.1 of 2008 by the learned Judge, Family Court-cum-VII Additional District Judge, Medak at Sangareddy, whereby, the subject HMOP filed by the appellant/husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955, seeking dissolution of marriage performed in between the appellant/husband and the respondent/wife on 01.06.1997, 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 in between the parties was performed on 01.06.1997, as per Hindu rites and customs at BDL Bhanur Township. Both the parties lived happily for one year. Thereafter, differences arose in between them. During their wedlock, they begot two children, namely, Sourabh and Nikhil. From

17.06.2005, the respondent/wife is living separately with her parents at BDL Bhanur Township. Several efforts were made by the appellant/husband for reconciliation of disputes and to bring back the respondent/wife to matrimonial home, but she did not join the company of the appellant/husband. The appellant/husband also approached the Family Counseling Centre to settle the dispute. Even before the Family Counseling centre also, the respondent/wife did not accept the advice of the authorities and refused to join the company of the appellant/husband. There is Ex.A5-copy of application addressed to Family Counseling centre to substantiate the same. Though there is a direction by the Court in favour of appellant/husband to visit the children, the respondent/wife is not allowing the appellant/husband to see the children. The appellant/husband was threatened by the brothers of the respondent/wife. Love and affection in between the parties completely dried up and there is no chance of reunion. The marriage between the parties is irretrievably broken down, as there is separation about one and half decades and ultimately, prayed to allow the appeal as prayed for. In support of his contentions, learned counsel has placed reliance over the decision

of this Court in ***Kalapatapu Lakshmi Bharati v. Kalapatapu Sai Kumar***¹.

4. On the other hand, learned counsel for the respondent/wife would submit that the respondent/wife was ill-treated by her mother-in-law as well as the appellant/husband. She was forced to stay at her parents' house. There are laches on the part of the appellant/husband. Though the subject HMOP was filed on the ground that the appellant/husband was treated with cruelty by the respondent/wife, there is no evidence to substantiate the same. The first child, namely, Sourabh is pursuing M.S. in Canada. The second child, namely, Nikhil is pursuing I.I.T at Mandi. Huge expenses are being incurred by the respondent/wife towards education of the children. The appellant/husband did not contribute for the education of the children. Under these circumstances, the Court below rightly analysed the oral and documentary evidence on record and arrived at a just conclusion. There are no circumstances to vary the impugned order, dated 11.10.2010 and ultimately prayed to dismiss the appeal.

5. In view of the above rival submissions, the points that arise for determination in this appeal are as follows:

¹ 2017(1) ALD 272 (DB)

- 1. Whether the appellant/husband is entitled for dissolution of marriage performed between him and the respondent/wife on the ground of cruelty under Section 13(1)(ia) of Hindu Marriage Act?*
- 2. Whether the impugned order and decree, dated 11.10.2010 passed in H.M.O.P.No.1 of 2008 by the Family Court-cum-Additional District Judge, Medak at Sangareddy, are liable to be set aside?*

POINTS:-

6. It is evident from the record that the marriage in between the parties was performed on 01.06.1997 at BDL Bhanur Township as per Hindu rites and customs. The parties lived happily for one year. Thereafter, differences arose in between the parties. There are allegations of desertion and cruelty on the part of the respondent/wife. There is also an allegation that the respondent/wife did not allow the appellant/husband to visit the children, in spite of direction of the Court concerned. It is also the specific case of the appellant/husband that the respondent/wife is living separately at her parents' house at BDL Bhanur Township from 17.06.2005. To substantiate cruelty on the part of the respondent/wife, the appellant/husband got examined himself as P.W.1 and also got examined his maternal uncle as P.W.2 and his colleague as P.W.3. The respondent/wife got examined herself as

R.W.1 and got examined her father as R.W.2 and one employee as R.W.3. Here, in this case, both the parties are blaming each other. The fact remains that the appellant/husband and the respondent/wife are living separately from 17.06.2005. There is record to show that under Exs.A4 and A5, an application was made by the appellant/husband to the Family Counseling Centre for settlement of marital dispute and take back the respondent/wife to the matrimonial home. However, those negotiations failed. On 17.11.2006, both the parties were present before the Family Counseling Centre and the appellant/husband stated that he is ready to stay with the respondent/wife at Sangareddy or some other place, but however, the respondent/wife refused to stay with him. Thereafter, the Project Director, Women and Child Development Agency, advised the parties to take legal recourse. On earlier occasion also, negotiations were conducted before the Family Counseling Center on 10.11.2006, which also did not fructify. In ***Kalapatapu Lakshmi Bharati's*** case (supra) relied by the learned counsel for the appellant/husband, a Division Bench of this Court held as follows:

“8. The evidence on record, as discussed by the lower Court, would clearly show that serious differences cropped up between the appellant and the respondent and that the repeated efforts made by the elders for reconciliation proved futile. Of course, the lower Court has accepted the plea of the respondent that it is only due to the adamant attitude of the appellant and her parents, that the parties

could not sink their differences and live together. The fact, however, remained that the appellant and the respondent are living separately from 2002 onwards, which means that 14 years had expired since the time they started living separately.

9. In *Samar Ghosh v. Jaya Ghosh*¹, the Supreme Court held that once the parties are separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage is broken down and that the Court, no doubt, would seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. It has further held that the consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties. The Apex Court referred to and relied upon its earlier judgment in *Kohli v. Neelu Kohli*², wherein it is held as under:

'We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of the 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.'

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.

Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

The other majority view, which is shared by most jurists, acceding to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind

eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, it becomes obvious that the approach adopted by the High court in deciding this matter is far from satisfactory.'

10. *One of the instances indicated by the Supreme Court in Samar Ghosh (1 supra), which may be relevant in dealing with the case of mental cruelty is as under:*

'Where there has been a long period of continuous separation, it may fairly be concluded 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. In such like situations, it may lead to mental cruelty.'

11. *In the light of the undisputed fact that the parties have been living separately for nearly 14 years, there may be no escape from the conclusion that the marriage has irretrievably broken down. As held by the Supreme Court, a long time separation itself would lead to mental cruelty. Therefore, irrespective of the findings of the lower Court on the failure of the appellant to prove mental cruelty, she is entitled to a decree for dissolution of marriage on the sole reason that there is no possibility for reunion of the parties in order to live together. Since the marriage between the parties has irretrievably broken down, any attempt to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties for the rest of their lives."*

7. In the instant case, as seen from the entire material placed on record, it clearly establishes that there are serious disputes and differences among the parties. The appellant/husband made several efforts for reconciliation and settlement, but all those efforts proved futile. There is evidence to show that the respondent/wife did not allow the appellant/husband to visit the children. There are also allegations that the appellant/husband was abused by his brother-in-law. In spite of the efforts made by

the appellant/husband as well as the elders, the parties could not clear their differences. Admittedly, both the parties living separately continuously for more than one and half decades and there are no chances of reunion between the parties. The love and affection in between the parties are completely dried up and there is no possibility of reunion between the parties. The marriage has become unworkable. Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond has broken down beyond repair and such a marriage becomes a fiction though supported by 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 regard for the feelings and emotions of the parties. In such like situations, it may cause mental cruelty to the parties. In the instant case, the appellant/husband, by leading the evidence of P.Ws.1 to 3, is able to establish mental cruelty on the part of the respondent/wife. In view of these circumstances, it can also be safely concluded that since the marriage between the parties has irretrievably broken down, any attempt to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties for the rest of their lives. Under these

circumstances, we deem it appropriate to sever the legal tie between the parties and grant them divorce.

8. Accordingly, this Family Court Appeal is allowed by setting aside the order, dated 11.10.2010, passed in H.M.O.P.No.1 of 2008 by the learned Judge, Family Court-cum-VII Additional District Judge, Medak at Sangareddy. The marriage solemnized in between the parties on 01.06.1997 stands dissolved by a decree of divorce.

9. In the course of submissions, learned counsel for the appellant/husband had conceded that the appellant/husband is ready to bear the educational expenses of two children, namely, Sourabh and Nikhil and is ready to deposit an amount of Rs.5,00,000/- each in the name of his two sons.

10. Taking on record the said submission, the appellant/husband is directed to deposit an amount of Rs.10,00,000/- in the name of his two sons, namely, Sourabh and Nikhil, (Rs.5,00,000/- each) within a period of eight (8) weeks from today. On such deposit, both the sons are permitted to withdraw the said amount.

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: 29.11.2022
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