

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

FAMILY COURT APPEAL No.86 of 2009

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

This Family Court Appeal, under Section 19 of the Family Courts Act, 1984, is filed by the appellant/wife, challenging the order and decree, dated 28.02.2008, passed in F.C.O.P.No.491 of 2003 by the Judge, Family Court, Hyderabad, whereby, the subject FCOP filed by the respondent/husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955, seeking divorce against the appellant/wife, was allowed.

2. Heard the learned counsel for both sides and perused the record.

3. Learned counsel for the appellant/wife would contend that there is specific evidence of the appellant/wife as R.W.1 to demonstrate that there was no cruelty or desertion on her part. There is no evidence to substantiate that at any point of time, the appellant/wife treated the respondent/husband with cruelty. Without there being any evidence on record, the Court below was

pleased to dissolve the marriage in between the parties *vide* the impugned order, dated 28.02.2008. The appellant/wife is still willing to live with the respondent/husband and ultimately prayed to set aside the impugned order and decree and allow the appeal as prayed for.

4. On the other hand, learned counsel for the respondent/husband would contend that there are several instances, which clearly demonstrate that the appellant/wife treated the respondent/husband with cruelty. In spite of negotiations before the Advisory Board, the appellant/wife did not join the company of the respondent/husband. The appellant/wife addressed letters to the Commandant-employer of the respondent/husband. There are several instances, which are placed on record through the evidence of P.W.1, to substantiate the cruelty on the part of the appellant/wife. The Court below, having analysed the entire evidence on record in correct perspective, dissolved the marriage performed in between the parties. There is no infirmity or merit to vary the impugned order, dated 28.02.2008 and ultimately prayed to dismiss the appeal.

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

“Whether the impugned order and decree, dated 28.02.2008, passed in F.C.O.P.No.491 of 2003 by the Judge, Family Court, Hyderabad, are liable to be set aside?”

POINT:-

6. The material placed on record reveals that the marriage in between the appellant/wife and the respondent/husband was solemnised on 05.12.2000 at Kolkata as per Hindu rites and customs. During their wedlock, they were blessed with a child. The respondent/husband sought divorce on the ground of cruelty. To substantiate the same, he deposed himself as P.W.1 and got marked Ex.P1-Marriage register, Ex.P2-photograph, Ex.P3-legal notice, Ex.P4-letter addressed by appellant/wife to Commandant 2nd Signal Bn, CRPF, Hyderabad, Ex.P5-letter dated 21.12.2002, Exs.P6 to P8-receipts of M.Os., Ex.P9-acknowledgement and Exs.P10 and P11-Forms of Money Order. To rebut the evidence of the respondent/husband, the appellant/wife examined herself as R.W.1 and got marked Ex.R1-letter. Here, it is pertinent to state that in the cross-examination of R.W.1, she clearly stated that though she was interested to join her husband, she is afraid whether the respondent/husband would take care of her and her

child. It is borne by the record that both the parties are living separately from the year 2002 and the Court below negotiated the parties and directed the appellant/wife to join the company of the respondent/husband at Sindri, a place which is situated near Kolkata, where the appellant/wife is living with her parents. The Court below also fixed the date of joining and posted the case to 04.04.2006. In spite of willingness on the part of the respondent/husband to receive the appellant/wife in his company, the appellant/wife did not join the company of the respondent/husband. There is also specific evidence of P.W.1, how the respondent/husband was insulted and the letters were addressed to the Commandant-employer of the respondent/husband. It is conceded by R.W.1 in her cross-examination and those letters were marked as Exs.P4 and P5. Several instances were narrated by P.W.1 to substantiate the conduct and ill-treatment meted out to him by the appellant/wife.

7. As seen from the material placed on record, the marriage in between the parties has broken down beyond repair. There is no hope of their reunion. Both the parties have parted their ways long back in the year 2002 and living separately since then. The

marriage in between the parties had irretrievably broken down beyond repair.

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. It is settled law that this 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.

11. 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."

12. The Hon'ble Apex Court, in a catena of judgments, has exercised its inherent powers under Article 142 of the Constitution

¹ (2006) 4 SCC 558

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).

13. In the instant case, the Court below while dealing with the evidence of P.W.1 and R.W.1 and the documents indicated above, arrived at a conclusion that the requirements under Section 13(1)(ia) of the Hindu Marriage Act, 1955 are made out by the respondent/husband and was pleased to dissolve the marriage in between the parties vide impugned order, dated 28.02.2008. 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. The appeal lacks merit and is liable to be dismissed.

14. Accordingly, the Family Court Appeal is dismissed.

² (2007) 4 Supreme Court Cases 511

³ (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

Date: 26.10.2022
ssp