

**THE HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA
AND**

THE HON'BLE SMT JUSTICE M.G.PRIYADARSINI

F.C.A.No.69 OF 2019

JUDGMENT:- *(Per Dr.CSL,J)*

1. The appellant-wife is before this Court challenging the order that is rendered by the Family Court, Secunderabad in HMOP.No.284 of 2017, dated 06.02.2019.

2. Heard both sides.

3. The respondent-husband filed a petition seeking the Court to pass a decree of divorce invoking the grounds of cruelty and desertion. The Family Court, Secunderabad, which dealt with the matter, gave a finding to the effect that the respondent-husband could not prove the ground of cruelty, but succeeded in establishing the fact of desertion on part of the appellant-wife. Thereby, the Family court, Secunderabad, passed a decree of dissolving the marriage between the spouses, which resulted in the present appeal.

4. Making his submission, learned counsel for the appellant contended that the appellant and the respondent have got love and affection against each other. Learned

counsel submitted that though a suggestion was put when the respondent/husband was cross-examined that the appellant-wife is ready to withdraw all the cases that are filed against him and to join him, the respondent-husband refused to take her to marital fold. That itself goes to show that it is the respondent-husband who has committed the acts of cruelty and desertion but not the appellant-wife. Learned counsel also stated that as the appellant was preparing and appearing for the examination held for post of Police Constable, she resided at her parent's house for the purpose of taking coaching. Learned counsel contended that the coaching centre was nearby to the house of her parents and therefore, obtaining required permission from the respondent-husband, she started staying at her parent's house and took coaching and therefore that does not mean that she committed an act of desertion. Learned counsel also submitted that misunderstandings arose between the spouses due to the involvement of the mother-in-law of the appellant and that fact is known to the respondent-husband also. Learned counsel further contended that the appellant did not carry any iota of intention to desert the respondent-husband.

But the said fact was not taken note by the learned Judge of the Family Court, Secunderabad and thereby, the learned Judge of the Family Court passed a wrong order. Learned counsel, by submitting thus, seeks the Court to set aside the impugned order. Also, during the course of submission, learned counsel for the appellant-wife stated that when the wife resides elsewhere due to the attitude and cruelty of the husband, that does not amount to desertion on part of the wife, relied upon the decision of the division Bench of this Court in the case between **Sulochana v. M.Ramachari**¹, wherein at Para 23 of the order, it was held as under:-

“23. If we apply the aforementioned legal principles to the facts of the present case, we have no hesitation to hold that in the absence of the respondent proving cruelty against the appellant, the Court below has committed a serious error in granting decree of divorce only on the ground of the parties living separately for a long time and that by such separation, the marriage has irretrievably broken down. In our opinion, though this ground may be supplementary to any other substantive grounds mentioned under Section 13 of the Act, the same cannot be a standalone ground.

¹ 2017 (4) ALD 206 (DB)

Otherwise, as observed by the Supreme Court in Neela kumar's case (supra) and Darshan Gupta's case (supra), an unscrupulous husband may be benefited by the grant of divorce based on his own deeds and it encourages such unscrupulous husbands to drive away their wives and secure divorce by pleading that the marriage has irretrievably broken down. Though the respondent has made bald allegations against the appellant of her leading 'colourful life' and subjecting him to cruelty, he failed to let in any evidence in support of his allegations. As observed hereinbefore, even the Family Court has not held anything against the appellant. On the contrary, it has given a specific finding that the appellant has made out a reasonable ground to live separately from the respondent. In the light of these facts, we are of the opinion that the Family Court has committed a serious error in dissolving the marriage on the ground of irretrievable breaking down of the marriage between the parties. The respondent, having accepted the fact that he has been living with one Laxmi thereby admitting his misdeed, cannot be allowed to walk away with the advantage of securing dissolution of marriage with the appellant, his legally wedded wife. In view of the same, the decree in O.P.No.124 of 2006 cannot be sustained and the same is accordingly, set aside."

5. Opposing the submission made by the learned counsel for the appellant and the applicability of the aforementioned decision, learned counsel for the respondent-husband contended that without any reasonable cause, the appellant-wife left the company of the respondent-husband. Learned counsel submitted that within short time after marriage, the appellant-wife left to her parent's house and stayed there under the guise of taking coaching for appearing for Police Constable Examination. Learned counsel contended that during that time, the appellant-wife became pregnant. But she failed to inform the said fact to her husband and without his knowledge and consent, she got the pregnancy terminated. Learned counsel stated that the appellant-wife could not secure the job. He submitted that, later, the couple delivered a child, but the appellant-wife did not return to the house of the respondent-husband and started staying at her parent's house only without any justifiable cause. That apart, she started filing series of cases against the respondent-husband and his family members and the respondent-husband started attending different Courts. Learned counsel also submitted that even in her counter or

in her evidence, the appellant-wife did not show any justifiable cause as to why she did not join her husband and that itself goes to show that she deserted him without justifiable cause. Learned counsel further submits that filing of series of cases against the husband without there being any reason itself amounts to cruelty.

6. In this regard, learned counsel for the respondent-husband relied upon the decision of the Hon'ble Apex Court in the case between **Sivasankaran v. Shanthimeenal**². Learned counsel ultimately contended that though the respondent-husband proved and established both the grounds i.e. cruelty and desertion, the trial Court went wrong in holding that the respondent-husband could not establish the ground of cruelty. However, learned counsel states that the Family Court, Secunderabad, passed a decree of divorce on the ground of desertion and therefore, the order rendered needs no interference.

7. A perusal of record goes to show that the learned Judge gave finding basing on the evidence of PW1, Exs.A1

² 2021 (5) ALD 286 (SC)

to A3, RWs 1 & 2 and Exs.B1 & B2. As rightly put forth by the learned counsel for the respondent-husband, neither in the counter nor in the chief affidavit filed by her in lieu of her chief examination, the appellant-wife stated in clear terms as to why she started residing at her parent's house since 2013. No material is on record to show that she at least made an attempt to join her husband. Also, she did not state that due to justifiable grounds or cause, she, leaving her matrimonial home, started residing at her parent's house for a long period extending upto five years. No specific instances or reasons are shown as to why the appellant-wife left the husband for such a long period.

8. When the order of the Family Court is gone through, we find that the learned Judge had indeed discussed the merits of the case at length. Also, the perfect and established legal position is applied. Thereby, the learned Judge had come to a just conclusion. The respondent-husband succeeded in establishing the ground of desertion and therefore, the Family Court, Secunderabad, basing on the said ground, passed a decree of divorce. None of the grounds urged or the points projected by the appellant

invalidate the reasoned order of the Family Court, Secunderabad. Therefore, we are of the opinion that the present appeal lacks merits.

9. Resultantly, the Appeal stands dismissed without costs.

10. Miscellaneous petitions, if any pending, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

JUSTICE M.G.PRIYADARSINI

Date:11.01.2023.
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