

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

AND

THE HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

F.C.A. No.96 of 2019

JUDGMENT: *(Per the Hon'ble Smt. Justice M.G. Priyadarsini)*

Assailing the judgment rendered by the Judge, Family Court at Khammam, dated 16.04.2019 in F.C.O.P. No.129 of 2015, the present appeal is preferred by the respondent therein.

2. By the impugned order, the learned Family Court allowed the O.P. filed by the wife, respondent herein, under Section 13(1)(ia) of the Hindu Marriage Act granting decree of divorce by dissolving the marriage subsisting between the appellant and respondent dated 14.04.2012.

3. For the sake of convenience, hereinafter, the parties will be referred to by their matrimonial status i.e., the appellant as 'husband' and the respondent as 'wife'.

4. The facts that are necessary for disposal of the present appeal are that the marriage of respondent-wife with the appellant-husband took place on 14.04.2012 at Sequel Resorts, Khammam Town, as per Hindu rites and Customs. Wife is a B.Tech Graduate with Post-Graduation in M.B.A. and the husband was working as Software Engineer in U.S.A. at the time of marriage. In the

marriage, the parents of wife paid Rs.20.00 lakhs out of Rs.40.00 lakhs agreed to be paid towards dowry. After the marriage, wife joined the company of the husband at U.S.A. on 31.07.2012. Subsequently, the husband started to harass the wife mentally and physically with a demand to get the balance dowry amount and also additional dowry. The couple visited India on 16.01.2013 and although the wife was suffering with typhoid, husband insisted her to return to U.S.A. as scheduled on 19.03.2013 in order to process for H1 Visa and she left for U.S.A. along with husband on 26.03.2013 even though she was suffering with health problems. Even after returning to U.S.A., her health condition did not improve and the husband did not get her treated with doctor, instead, he advised her to take the pills brought from India. After getting H1 Visa, as the wife did not get placement, husband started harassing her mentally stating that she had no intelligence and had he married another girl, she would have got job easily. Even for purchase of household articles, husband insisted her parents for payment of Rs.3.00 lakhs and he made the wife to sleep on the floor as the said demand was not met with by the parents of wife. Even during weekends, husband used to be at home and never used to take the wife out. When wife got an occasion to see the emails of husband, she came to know that the husband is having insane sexual behaviour and extra marital relations. The husband and his parents used to harass the wife for getting additional

dowry. The couple again visited India on 18.04.2015 and stayed till 10.05.2015, during which period, the husband and his parents harassed the wife both physically and mentally demanding additional dowry and threatened that unless they are paid Rs.50.00 lakhs towards additional dowry, they would not allow the wife to join the husband. Even they insisted the father of wife to transfer the landed property in the name of husband. While so, on 23.08.2015, the husband and his parents visited the house of parents of wife at Khanapuram Haveli; abused the wife and her parents in filthy language; beat the wife with hands and insisted them to meet the demand for Rs.50.00 lakhs additional dowry and the transfer of land in the name of husband. As the said demand was not met with, husband left India leaving the wife with her parents. Hence, the O.P. by the wife seeking dissolution of marriage. Contesting the O.P., husband filed his counter denying the allegations made in the O.P. as false and baseless.

5. Before the Court below, wife got examined herself as P.W. 1 apart from examining her father as P.W.2, maternal uncle as P.W.3 and an independent witness as P.W.4. Exs.A.1 to A.6 were marked on her behalf and Exs.X.1 to X.12 were marked through P.W.4. The husband got examined himself as R.W.1 and got marked Exs.B.1 to B.13. The learned Family Court, considering the above said evidence, allowed the O.P. granting decree of divorce by

dissolving the marriage mainly on the ground that *the parties are residing separately for a period of four years*. Aggrieved thereby, the husband is before this Court by way of present appeal.

6. Heard the learned counsel for the appellant-husband. In spite of several opportunities, there is no representation on behalf of the respondent-wife. Perused the material available on record.

7. It is to be noted that at the time of admission of the appeal, on 19.06.2019, although I.A. No. 1 of 2019 was filed seeking suspension of the impugned judgment of the Court below, till date no such order was passed. During the pendency of the appeal, this Court made several attempts to have conciliation between the couple to avoid the divorce but the said measures did not yield any result. In the process, though this Court insisted the counsel for the respondent to get an affidavit from the wife to the effect that she has not remarried so far, such affidavit has not been filed having availed several adjournments.

8. The learned counsel for the appellant has vehemently argued that the learned Family Court having held all the points in favour of the husband on the plea of dissolution of marriage, ought not to have decreed the O.P. on the mere ground that the parties are living separately for a period of four years. It is contended that the marriage took place on 14.04.2012 and that the couple led happy

marital life till 10.05.2015, on which date the husband left India for U.S.A. However, the wife filed a false criminal case for the offence under Section 498-A IPC stating that on 23.08.2015, the husband and his parents came to her house at Khammam, abused her and her parents in filthy language, beat her with hands on the demand of transfer of land in the name of husband and for payment of additional dowry of Rs.50.00 lakhs. In fact, the husband left India for U.S.A. on 10.05.2015 and on the alleged date of incident, he was not at all present in India. Although the wife sought for divorce on the ground of cruelty, she has utterly failed to prove the said ground and having held that the wife has not proved any allegation against the husband, the learned Family Court ought not to have granted the decree of divorce, more particularly having negatived all the points against the wife. Therefore, the learned counsel for the appellant seeks to set aside the impugned order by dismissing the O.P.

9. Per contra, the learned counsel appearing on behalf of respondent-wife has contended that since the marriage has broken down beyond repair and as there is no possibility of reunion of couple, the learned Family Court has rightly granted decree of divorce and therefore, the said judgment needs no interference by this Court.

10. The wife filed the O.P. seeking decree of divorce on the ground of cruelty on account of demand for additional dowry and on the ground of behaviour of husband in sending emails to gays and girls. To substantiate her stand, wife examined herself as P.W.1 apart from examining P.Ws.2 to 4 and marking Exs.A.1 to A.6. To substantiate her stand as to the behaviour of husband in sending emails to gays and girls, she got examined P.W.4 and through him, got marked Exs.X.1 to X.12 i.e., emails of husband, C.D. and pen drive. Analyzing the evidence of P.W.1 and P.W.2 particularly the admissions of P.W.1 in the cross-examination, the learned Family Court came to the conclusion that the wife has not established the alleged cruelty meted out by the husband or the demand of additional dowry. As regards the behaviour of husband in light of evidence of P.W.4 and Exs.X.2 to X.10, the learned Family Court at para 24 observed as under:-

“24. This court finds reason with the contention of the counsel for the respondent respecting the secondary evidence and the proof pertaining to secondary evidence and therefore, this court is of the considered opinion that Ex.X.2 to X.10 can be said to have been not proved from the above aspect pertaining to secondary evidence. In other words, since Exhibits X.2 to X.10 are not downloaded from the mail ID of the respondent, the same can be said to have been not proved. Thus this court is also of the opinion that respondent as RW.1 has disproved the contention of the petitioner respecting exhibits X.2 to X.10.”

However, considering the plea of the wife that the marriage has broken down irretrievably and there cannot be any possibility of

reunion, the learned Family Court has granted decree of divorce by allowing the F.C.O.P.

11. The Apex Court in **Naveen Kohli v. Neelu Kohli**¹, at para Nos. 72 to 76, observed as under:-

“72. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented the petition for divorce, it can well be presumed that the marriage has broken down. The Court, no doubt, should seriously make an endeavour to reconcile the parties. Yet, if it is found that the break down is irreparable, then divorce should not be withheld. The consequence of preservation in law of the unworkable marriage which has long ceased to be effective or bound to be a source of greater misery for the parties.

73. A law of divorce based mainly on fault is inadequate to deal with a broken marriage. under the fault theory, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute.

74. 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 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 matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever the 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.

75. 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 solvage, public interest lies in the recognition of that fact.

76. 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 forever to a marriage that in fact has ceased to exist.”

¹ (2006) 4 SCC 558

12. In the present case, as observed above, in order to save the matrimonial life, this Court made endeavour for mediation which yielded no result.

13. It is no-doubt true that the learned Family Court did not convince with the evidence adduced by the wife regarding cruelty, demand of additional dowry and alleged behaviour of husband in sending emails to gays and girls. However, considering the fact that the husband and wife parted their ways and are living separately for a considerable period, the learned Family Court has granted divorce by dissolving the marriage between the parties on the sole reason that there is no possibility for reunion of the parties in order to live together. Even during the pendency of the appeal, though several measures are taken by this Court for conciliation, the parties did not come forward for reunion, which shows that the marriage between the parties has irretrievably broken down. As held by the Apex Court, when the marriage between the parties has irretrievable 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. Therefore, this Court finds no fault with the findings of the learned Family Court in granting decree of divorce by dissolving the marriage between the parties and the appeal is liable to be dismissed.

14. In the result, the appeal stands dismissed confirming the judgment of the learned Family Court, dated 16.04.2019 in F.C.O.P. No. 129 of 2015 in granting decree of divorce by dissolving the marriage, dated 14.04.2012 that took place between the parties. No order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

DR. CHILLAKUR SUMALATHA, J

M.G. PRIYADARSINI, J

01-03-2023
tsr

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