

**THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA
AND
THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

**F.C.A.No.120 OF 2016
AND
F.C.A.No.129 OF 2016**

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

1. Challenge in the Family Court Appeal No.120 of 2016 is the order rendered by the Family Court, Secunderabad in F.C.O.P.No.397 of 2014, dated 30.03.2016 (common order). Likewise, challenge in Family Court Appeal No.129 of 2016 is the order rendered by the same Court through the same common order, however, in F.C.O.P.No.379 of 2012. The appellant in both the appeals is the husband of the respondent.
2. Heard Sri CH.Venu Kumar, learned counsel for the appellant. Though Mr.P.Shashi Kiran, Advocate, is representing the respondent, the learned counsel failed to submit his contentions despite of granting sufficient opportunity.
3. For the sake of convenience of discussion, the parties to both the appeals would be referred to by their matrimonial status i.e. the appellant as husband and the respondent as wife.

4. Initially, the husband moved an application for grant of divorce. Later, the wife filed a petition seeking for restitution of conjugal rights. Equally, the wife, along with her son, moved another application for grant of maintenance. All the three cases i.e. the case which was filed for grant of divorce, the case which was filed for restitution of conjugal rights, the case which was filed for grant of maintenance, were clubbed together and joint trial was conducted taking F.C.O.P.No.379 of 2012 as the leading case. Subjecting the evidence of PW1, RW1, Exs.A1 to A15 and Exs.B1 to B13 to scrutiny, the learned Judge of the Family Court came to a conclusion that there are no grounds for grant of divorce. Accordingly, F.C.O.P.No.379 of 2012 which was filed for the said relief was dismissed. However, the request of the wife for restitution of conjugal rights was honoured by allowing F.C.O.P.No.397 of 2014 which was filed by the wife. Also, the maintenance case vide M.C.No.56 of 2014 was allowed- in- part awarding maintenance of Rs.10,000/- per month to the son. However, no amount was granted towards maintenance so far as the wife is concerned. Aggrieved by the order of dismissal of the petition filed seeking for divorce and further aggrieved by the order of

decreeing the application filed by the wife for restitution of conjugal rights, the husband preferred two appeals which are taken up for disposal through this judgment.

5. Making his submission, learned counsel for the appellant contended that it is the wife who had subjected the appellant –husband to cruelty. But the learned Judge of the Family Court brushing aside all the evidence produced by the husband, held that the husband behaved cruelly with the wife which is most unjustifiable. Learned counsel submitted that suspecting the husband, the wife, since beginning, subjected the husband to physical and mental torture. Learned counsel stated that the wife cheated the husband and had usurped the property of the husband and misappropriated the hard earnings of the husband. But the said fact was not perceived by the Family Court. Learned counsel stated that the husband had more than Rs.19,00,000/- in his Savings Bank Account. But, without his knowledge, his wife and her father withdrew all the sum and that apart, the wife has taken away gold jewellery worth Rs.6,00,000/- and misappropriated the same. But the said

fact was not appreciated by the Family Court. Learned counsel stated that the marriage is irretrievably broken down and the spouses cannot now reconcile their differences and live together and therefore, the Family Court ought to have decreed the petition filed for grant of divorce, but it failed to do so. By submitting thus, learned counsel seeks to allow both the appeals.

6. The version of the husband as per his pleadings in O.P.No.379 of 2012 is that himself and his wife were working in GE group of companies and at that time, they became close to each other and decided to go for marriage. With the approval of elders, their marriage was performed. They lead their marital life for 1 ½ years and during that period, his wife used to take care of his parents and behaved like a daughter. Therefore, they purchased properties in the name of his wife and also purchased jewellery as per her choice. However, later, his wife developed evil intention to grab the property and jewellery and started harassing him and his parents. He took her to London in the year 2009 with a fond hope that she may change her attitude. But, there was no change in her attitude. He returned in the month of July 2011 and his wife

returned in the month of September and started residing with her parents. Though he requested, his wife refused to join him. She demanded to take a separate house. Acceding to her demand, he took a separate house. Though his wife joined him, she used to quarrel with him on petty issues and made the life miserable. She even failed to take care of the child. In the month of December 2011, she left him and went away to her parents house. The panchayat held did not yield any fruitful result. In the light of the extreme cruelty on her part and as the marriage has irretrievably broken down, there is every requirement to pass a decree of divorce in his favour by dissolving the marriage on the grounds of cruelty and desertion.

7. The version of the wife as could be perceived through the contents of the application filed by her under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and the counter filed by her in the petition filed by her husband for grant of divorce is that after they fell in love, she convinced her parents and her parents performed their marriage. Her father gave Rs.5,00,000/- as dowry and spent about Rs.3,00,000/- towards marriage expenses. After marriage,

they resided at her husband's place till they moved to London in the year 2009. Her husband developed extra martial affair with his colleague by name Mrs..Reshma Thomas at London and on 07.07.2011, she caught both of them red-handed in a compromising position. Without even caring for her career, she sent her husband first to India and after attending all the formalities, she came back to India. Instead of mending his ways, her husband started having contacts with the said Reshma Thomas through Internet chatting and telephonic calls. Finally, her husband had sent her and her son out of the house to get rid of them. She took shelter at her parent's house. Though her parents requested her husband to take back her and their son to marital life, her husband refused. Despite of pardoning her husband though he was caught red-handed with Mrs.Reshma Thomas at London due to love and affection, her husband is bent on ruining her and their son's life. He filed a petition seeking divorce to get rid of her and their son and for fleeing away from the country for getting married with Mrs.Reshma Thomas.

8. When the husband alleged that himself and his family members were subjected to cruelty by his wife and his wife

finally deserted him, the allegation of the wife is that they lead happy marital life for a considerable period and left India in pursuit of their career. However, at United Kingdom, he developed illicit intimacy with a married woman and while they were together in an unnoticeable way, they were seen by her and therefore, she made him to return India and within no time, she also returned. But her husband continued the contacts with the said woman through mails and over phone and finally, drove her and her child out of the house and started planning to marry the woman with whom he maintained affair. The husband, though alleged that as he belongs to Scheduled Caste, his wife harassed him and neglected him, there is no material to substantiate the said contention. Further, as rightly observed by the Family Court, such a plea was not taken by the husband in his pleadings in the petition filed by him seeking divorce. That apart, he himself contended that his wife mingled with his family members and became closer within no time and all were happy with her. Though he alleged that out of love and affection, his family members purchased properties in the name of his wife, no proof is produced to show that such a

purchase was made by his family members out of their own funds.

9. The contention of the wife is that though her husband was at fault and maintained illicit affair with another woman, she is ready to join him. However, the husband who subjected himself for cross-examination as a witness (PW1), made a clear mention that he is not prepared to take back his wife even if she is prepared to join him.

10. A person who comes to the Court seeking particular relief has to establish that he is entitled to such a relief. In the case on hand, the appellant-husband, who approached the Court seeking for decree of divorce on the ground of cruelty and desertion, is under obligation to establish that he is entitled to such a relief. Though the learned counsel for the appellant-husband contended that the mental cruelty is a condition to grant divorce and relied upon the decision of the Hon'ble Apex Court in the case between **VIJAY KUMAR RAMCHANDRA BHATE Vs. NEELA VIJAYKUMAR BHATE¹, JOYDEEP MAJUMDAR Vs. BHARTI JAISWAL MAJUMDAR²** and

¹ (2003) 6 Supreme Court Cases 334

² (2021) 3 Supreme Court Cases 742

NARENDRA Vs. K.MEENA³, this Court is of the view that if one of the spouses is to be blamed, the appellant-husband is more to blame. This Court does not find any such grave instances of cruelty on part of the respondent-wife and her intentional desertion. Though the appellant-husband contended that there is no proof that he necked out his wife and child from the house and indeed no such proof is produced, yet, it cannot be equally held that the respondent-wife has deserted the appellant-husband.

11. When the order rendered by the learned Judge of the Family Court is gone through, we find that learned Judge, having discussed each and every aspect of the case and appreciating the legal position, came to a just conclusion in both the petitions i.e. the petition filed by the appellant-husband for grant of divorce and the petition filed by the respondent-wife for restitution of conjugal rights. None of the observations made by the learned Judge needs any interference. Therefore, we ultimately hold that both the Appeals lacks merits and deserves dismissal.

³ (2016) 9 Supreme Court Cases 455

12. In the result, both the Family Court Appeals stand dismissed. There shall be no order as to costs.

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

Dr. JUSTICE CHILLAKUR SUMALATHA

JUSTICE M.G.PRIYADARSINI

Dt.20.02.2023
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