

**THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA**

**AND**

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

**F.C.A.Nos.38 of 2016 and 170 of 2017**

**COMMON JUDGMENT:** (*per Justice MGP,J*)

Inasmuch as both the appeals are filed against the common order dated 16.10.2015 made in F.C.O.P.Nos.218 of 2010 and F.C.O.P.No.128 of 2012 respectively, on the file of the Judge, Family Court, Warangal, they are being disposed of by this common judgment. By the impugned common order, the learned trial Judge while dismissing F.C.O.P. No. 218 of 2010 filed by the husband, appellant herein, seeking divorce and allowed F.C.O.P. No. 128 of 2012 filed by the wife, respondent herein, for restitution of conjugal rights.

2. The appellant in both the appeals is the husband and the respondent is the wife. For the sake of convenience, hereinafter, the parties will be referred to as 'husband' and 'wife'. Since the facts in both the O.Ps. are more or less common, the facts stated in O.P. No. 218 of 2010 are

referred in these appeals as common evidence was adduced therein.

3. The facts, in brief, which led to filing of the present appeals are as under:-

Marriage between the parties was solemnized on 19.08.2006 as per Hindu caste customs and traditions and after the marriage, the couple lived together happily for a period of three months. Since the wife was insisting him to put up separate residence and did not allow him for conjugal life, a panchayat was conducted before the elders at the instigation of husband and at the intervention of elders, the wife allowed the husband for conjugal life and during their wedlock, a female child was born on 25.09.2008. After the birth of the child, the wife remained at her parents' house and in spite of his best efforts, as the wife did not join his company, the husband again placed the matter before the elders and also before the Police. However, the wife did not join his company and voluntarily deserted his society in September, 2008. Therefore, the husband sought for divorce on the ground of cruelty and voluntary desertion. The wife filed her counter contending

*inter alia* that two months after the marriage, husband started ill-treating her demanding for additional dowry at the instigation of his other family members and that she was treated as maid-servant. As she gave birth to a female child, her husband and his family members demanded Rs.1.00 lakh on the occasion of 21<sup>st</sup> day ceremony of the child and as the said demanded was not meted by her parents, her husband and in-laws did not turn up for the 21<sup>st</sup> day ceremony. However, due to the intervention of elders, husband took her back in the month of November, 2008 and eventually, in the month of November, 2009, as the husband and his family members, beat her black and blue, she returned back to her parents' house apprehending danger to her life. As the elders' mediation did not yield any result to take her back, she lodged a complaint with the Police. It was pleaded that the husband never attempted to see her child and that she was always ready and willing to join the conjugal society of the husband.

4. Both the F.C.O.Ps. were clubbed and common evidence was adduced in F.C.O.P.No.218 of 2010. On

behalf of the husband, P.Ws.1 to 3 were examined and on behalf of wife, R.Ws.1 to 3 were examined. No documentary evidence was let in by either of the party.

5. Considering the pleadings and evidence brought on record by both the parties, the learned trial Court dismissed the divorce petition filed by the husband and allowed the petition filed by the wife seeking restitution of conjugal rights. Aggrieved thereby, the present appeals have been filed by the husband.

6. The learned counsel for the appellant submits that the wife had deliberately deserted the company of the husband-appellant in the month of September, 2008 without there being any sufficient reason and that there is no evidence to disprove the claim of the husband-appellant in this regard. Since the relationship between the husband and wife are severely strained, after lapse of 14 years, the question of restitution of conjugal rights does not arise. The factum of wife filing O.P. No. 128 of 2012 after lapse of about 1 year and 8 months of filing of O.P. No. 218 of 2010 by the husband-appellant, itself proves that there are no *bona fides* in the O.P. filed by the wife seeking restitution of

conjugal rights. It is contended that inasmuch as the wife had harassed the husband to put up separate residence and in the process, as she did not allow him for conjugal life and left his society without any intimation, the trial Court ought to have granted divorce on the ground of cruelty and voluntary desertion.

7. On the other hand, the learned counsel appearing on behalf of respondent-wife has submitted that it is the husband who had not allowed her to join his society upon the delivery of female child and without there being any cause, he deserted her and that the wife was always ready and willing to join the conjugal society of the husband. Therefore, evaluating the evidence on record, the Court below has rightly dismissed the divorce petition and granted the relief of restitution of conjugal rights and the impugned order needs no interference by this Court.

8. Heard the learned counsel for the parties and perused the material available on record.

9. Before we analyze the respective pleadings and the evidence filed by both the parties, it is seen that the battle for the reliefs as sought for by both the husband and wife

is more than a decade. Both the husband and the wife have spent agonizing amounts of time in this litigation. The female child born out of the wedlock has also been affected by the present litigation. As per the pleadings of the respective parties, upheavals in the marriage started just three months into the marriage. The main ground of the husband seeking divorce is that after three months of conjugal life, the wife started demanding him to put up separate residence from his family members and in that connection, she has increased her harassment and not even allowed for conjugal life. In that connection, a panchayat was held before the elders and the wife has joined the conjugal life and in the month of September, 2008, a female child was born to them. Within one week thereafter, the wife left the conjugal society of the husband, deserted him voluntarily and started residing with her parents. However, as per the evidence adduced by the wife, after her delivering a female child, the husband and his family members started demanding Rs.1.00 lakh as additional dowry and that they did not turn up for the 21<sup>st</sup> day ceremony of the child. As the husband and his family

members did not took back the wife and the child, upon the mediation of elders and approaching the police, in the month of November, 2008, the husband took the wife and child to his house by receiving Rs.50,000/- as additional dowry. Again, after lapse of three months, the husband started harassing and ill-treating the wife physically and mentally demanding balance amount of Rs.50,000/-. Finally, in the month of February, 2009, the husband, his parents and sisters beat the wife black and blue, drove her out of their house threatening with dire consequence. The husband, as P.W.1, reiterated his stand before the Court below. P.W.2, his brother-in-law deposed that the wife harassed the husband and she did not allow the husband for conjugal life. P.W.3, an independent witness, simply deposed that within a short period of marriage, the wife deserted the husband.

10. In the cross-examination, the wife-R.W.1 denied the suggestion of her demanding and harassing the husband for putting up separate residence away from his parents. R.W.2, a mediator to the panchayat, deposed that the husband and his parents started harassing and ill-treating

the wife demanding additional dowry and that they treated her as maid servant. It is his evidence as the parents of wife did not meet the demand of additional dowry of Rs.1.00 lakh, the husband and his family members did not turn up to see the female child. R.W.3 testified as to the harassment meted out by the husband and his family members to the wife for additional dowry and their demand for Rs.1.00 lakh at the time of cradle ceremony. As rightly observed by the Court below, the husband in his cross-examination has categorically admitted that he did not see the child as he was in Hyderabad in company meeting; that he did not go to hospital to see the child even after his return from Hyderabad. The evidence of husband discloses that he did not try to see his child and that he does not know the name of the child and the class in which she is studying. Except the bald allegation that the wife was insisting for separate residence, in the entire evidence, the husband did not speak about any specific instance or manner of alleged cruelty. As rightly pointed out by the Court below, the husband failed to provide the details of elders of panchayat attended on his side. The Court below,

on evaluation of entire evidence in proper perspective, has rightly dismissed the F.C.O.P. filed by the husband for divorce and allowed the F.C.O.P. filed by the wife for restitution of conjugal rights. No grounds are made out to interfere with the impugned common order passed by the Court below.

11. In the result, both the appeals stand dismissed confirming the common order passed by the Judge, Family Court, Warangal dated 16.10.2015 in F.C.O.P. Nos. 218 of 2010 and 128 of 2012. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

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**Dr. CHILLAKUR SUMALATHA, J**

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**M.G. PRIYADARSINI, J**

February, 2023  
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**Date: 28-09-2022**