

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

AND

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

F.C.A. No.40 of 2017

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

Assailing the order dated 30.12.2015 in O.P. No.184 of 2012 passed by the Additional Family Court at Hyderabad, the present appeal is preferred by the respondent therein.

2. *Vide* aforesaid order, the Court below allowed the O.P. filed by the wife, respondent herein, under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights and directed the appellant-husband to take the respondent-wife to his conjugal society forthwith.

3. 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 11.12.2000 at Hasakotoor Village of Nizamabad as per Hindu rites and customs and the marriage was consummated. The couple lived together at the house of the appellant for certain period. Subsequently, due to the negligence of the appellant in providing healthy food and medicines, the respondent suffered abortion. However, due to the disputes between the couple, the appellant left the society of the respondent

on 24.10.2009 without any information to her. Though the respondent started taking treatment at Adarsh Maternity Nursing Home and Genesis Test Tube Baby Centre, Nizamabad, staying at the house of her in-laws, the appellant did not turn up for necessary test in spite of request made by the respondent. A caste panchayat was held in this regard wherein, the proposal of appellant for divorce was not accepted by the respondent. In spite of efforts of respondent to join the conjugal society, the appellant refused the same without any valid reason and he started blaming the respondent for infertility. Since her efforts did not yield any result, the respondent got issued a legal notice under Ex.A.20 to the respondent, but the respondent did not choose to give any reply. Hence, the respondent-wife filed the O.P. seeking restitution of conjugal rights. Contesting the O.P., the appellant filed a counter contending *inter alia* that there was no negligence on his part for the abortion of the respondent; that the respondent is having problem of ovaries, endometrial tissues in the womb and suppressing the same, he is being blamed for not conceiving the respondent. It is contended that the behaviour of the respondent caused mental agony and cruelty to the appellant. In fact, the respondent herself deserted the appellant and has been residing separately since 2009. Further, she has lodged a false complaint against him and his parents to the police on 10.04.2012, pursuant to which, police arrested the appellant and his parents and

detained them in judicial custody for three days. It is pleaded that there is no *bona fide* intention of the respondent to join the conjugal society of the appellant and therefore, prayed for dismissal of the O.P.

4. Before the Court below, the respondent got examined herself as P.W.1 apart from marking 24 documents as Exs.P.1 to P.24. The respondent got examined himself as R.W.1 and got marked Ex.R.1. The Court below considering the above said evidence, allowed the O.P. as indicated above. Aggrieved thereby, the husband is before this Court by way of present appeal.

5. The main contention of the learned counsel for the appellant is that the Court below did not appreciate the oral and documentary evidence in proper perspective and that the evidence adduced by the respondent-wife does not make out a case for ordering restitution of conjugal rights. It is further contended that there are no merits in the pleadings of the respondent that she had made lot of efforts to join the company of the appellant and in fact, since the respondent developed extra marital relationship, she has falsely pleaded that the appellant got lesser sperm count as against the normal sperm count. The court below failed to take note of the fact that the respondent got filed a false case under Section 498-A IPC on 10.04.2012, in connection with which, the police put the appellant and his parents under judicial custody for certain period

and in such a situation, it is impossible to lead matrimonial life by the appellant with the respondent. It is lastly pleaded that the appellant and the respondent have parted their ways way back in 2009 and after such a long time, there is no purpose in ordering the restitution of conjugal rights. Therefore, the learned counsel for the appellant seeks to set aside the impugned order by dismissing the O.P.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent. Perused the material available on record.

7. The respondent-wife, in support of her pleadings, testified as P.W.1 before the Court below. In her evidence, the respondent deposed that immediately after the marriage, she joined the appellant to lead the matrimonial life in the month of December, 2000 at the place of appellant, along with his parents. She became pregnant in the month of July, 2001, but she suffered miscarriage due to the negligence on the part of the appellant as he did not provide proper food and medical attention. As the appellant got selected as Conductor in the year 2005 at Hyderabad, they shifted their residence to Hyderabad and stayed at her parents' house. However, in October, 2009, the appellant demanded for additional dowry of Rs.2,00,000/- and as his demand was not fulfilled, he left the house without any intimation. In November, 2009, her parents

dropped the respondent at her in-laws house. In 2010, upon her insistence, the appellant underwent for Semen Examination wherein it was elicited that his sperm count is less than the normal count. On receipt of the said report, the appellant, did not turn up for further medical examination and again left the house. In this connection, a panchayat was conducted before the caste elders in the month of October, 2011 and the appellant insisted for divorce which was rejected by her. Again, on 06.11.2011, the appellant fixed an amount of Rs.1,60,000/- in her name, pressurized her to take the said amount and sign on divorce papers. Vexed with the attitude of the appellant, she got issued a notice to the appellant on 07.12.2011, marked as Ex.A.20, for which, the appellant did not issue any reply. Thus, it is her evidence that the appellant has bent upon to put an end to the marital relationship without there being any reasonable cause and was under the influence of his parents. In the cross-examination, she has admitted to have filed a case against the appellant for the offence under Section 498-A IPC in Crime No. 33 of 2012 on the file of Kammarpally Police Station on 10.04.2012. Ex.R.1 is the FIR in Crime No. 33 of 2012. Although she was cross-examined at length, no contra evidence was elicited by the appellant.

8. The appellant in his evidence as R.W.1 deposed that the respondent did not get any pregnancy and there was no advice by

any such doctor to take such nutritious food and injections and denied the allegation of abortion due to the negligence on his part as alleged by the respondent. But the medical evidence discloses otherwise, more particularly Ex.P.4. As seen from Ex.P.4, dated 23.07.2001, the respondent was tested positive for pregnancy test. The appellant has stated that due to the humiliation, mental agony and mental cruelty caused by the respondent and her parents, he left her company. But, there was no specific explanation by the appellant in this regard. Even he denied the allegation of his resulting into lesser sperm count and has taken a ground that the medical record produced by the respondent is created one. However, Ex.P.12 shows that the appellant had undergone sperm examination on 19.05.2010 and was found to be lesser in sperm count than the normal. Though he had taken a plea that the said document is created one, he did not take any steps in this regard such as summoning the concerned doctor. Although the appellant had taken a ground that the respondent developed extra marital relationship and therefore, she is not entitled for the relief of restitution of conjugal rights, no such plea was taken in the counter. Considering the evidence available on record, the contention of the learned counsel for the appellant that the respondent is lacking *bona fide* intention of joining conjugal society of the appellant is not acceptable. In fact, Ex.P.20, the legal notice, got issued by the respondent clearly discloses the intention

of the respondent to join the conjugal society of the appellant. The Court below, on evaluation of the entire evidence in proper perspective, has rightly come to the conclusion that the appellant withdrew the conjugal society of the respondent without any reasonable excuse and that the respondent has got *bana fide* intention to join the society of the appellant. The appeal lacks merits as no ground is made out to interfere with the findings of the Court below.

9. In the result, the F.C.A. is dismissed confirming the order of the Additional Family Court, Hyderabad, dated 30.12.2015 made in O.P. No. 184 of 2012. No order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

DR. CHILLAKUR SUMALATHA, J

M.G. PRIYADARSINI, J

08-02-2023
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