

**THE HON'BLE SRI JUSTICE ASHUTOSH MOHUNTA
AND
THE HON'BLE SRI JUSTICE G.KRISHNA MOHAN REDDY**

FAMILY COURT APPEAL No.261 of 2011

September 17, 2012

Between:

Raju, S/o.Late Papalal Singh

... Appellant

and

Puahpa Devi, W/o.Raju & D/o.Arjun Singh

... Respondent

**THE HON'BLE SRI JUSTICE ASHUTOSH MOHUNTA
AND
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JUDGMENT: (Per Hon'ble Sri Justice G.Krishna Mohan Reddy)

1. This appeal has arisen out of order dated 27.1.2011 delivered in O.P. No.853 of 2007 (O.P) on the file of the Court of Judge, Additional Family Court, Hyderabad. The appellant is the petitioner and the respondent herein is also the respondent in the O.P. For convenience, the parties hereinafter are referred to as they are arrayed in the O.P.

2. The petitioner filed O.P. under Section 11 read with Section 6 of the Hindu Marriage Act, 1955 (the Act) praying the Court to declare his marriage with the respondent as null and void.

3. It is necessary to note briefly the respective claims made by the parties, before going into the merits of the case. The petitioner claims that he married the respondent on 14.5.2003 as per the Hindu rites and customs, but it was not consummated for four years. The respondent voluntarily left him without giving any prior intimation to him or his family members. Several efforts were made by him, his family members and local panch members prior to 20.8.2007 to bring back the respondent to the matrimonial home, but she did not return back. On the other hand, the

respondent filed O.P.No.423 of 2004 claiming Rs.5,00,000/- towards maintenance against him. In that O.P. she stated that she would not live with the petitioner, which was in fact disposed of in his favour. Hence, he pleaded for the annulment of the marriage.

4. The respondent filed two counter affidavits. In the first counter, her plea is total denial of the claim of the petitioner. She pleaded that her parents paid Rs.50,000/- as dowry to the petitioner apart from giving gold ornaments and other household articles at the time of marriage. The marriage was performed by spending huge money. She further claimed that the petitioner and his parents ill-treated her and also tried to humiliate her and her family members physically and mentally, she used to work as a slave in the matrimonial home, whereas the petitioner failed to take any measures to safeguard her by reason of which she was annoyed mentally, which resulted in getting fits. Further, it is claimed by her that she was taken away by her parents because of her illness, but the petitioner and his family members did not take her back on the ground of her disease. It is pleaded by her that in O.P.No.423 of 2004 filed by the petitioner, the Court passed order on 20.7.2006 that she would join the company of the petitioner subject to his setting up separate residence for both of them, which became final on 12.6.2009, but the petitioner did not take any steps in accordance with that order. It is also informed that she filed M.C.No.225 of 2007 for maintenance, which is pending. It is further claimed by her that the petitioner has not been providing any maintenance to her. However, in the second counter, she expressed that she was ready to give divorce to her husband subject to the return of the dowry amount of Rs.50,000/-, 28 tulas of gold, 100 tulas of silver, and household articles worth Rs.2,00,000/-.

5. For the petitioner he got examined himself as P.W.1 and got marked Exs.P.1 to P.28. On the other hand, on behalf of the respondent she filed her affidavit for chief-examination as R.W.1, but her evidence was eschewed as she failed to appear for cross-examination before the

Court.

6. The Court below dismissed the petition mainly on the ground that the petitioner failed to comply with the order of the Court dated 12.6.2009 to set up separate residence for himself and the respondent, by reason of which he was not entitled for divorce.

7. In this appeal, learned counsel for the petitioner would contend that what is important is that in the second counter filed by the respondent, it is clearly admitted that she has no objection to grant divorce subject to payment of Rs.50,000/-, 28 tulas of gold, 100 tulas of silver and Rs.2,00,000/- towards household articles.

8. The parties have appeared before the Court. The respondent has stated that she does not want any permanent alimony. It is also represented that there was no consummation of marriage and they did not get children. The respondent has asserted that she got no objection for granting divorce between her and the petitioner.

9. The petitioner as P.W.1 reiterated the petition averments. What is important is that his evidence was not contradicted, on the other hand, the respondent failed to attend before the Court to give evidence in the case. Therefore, there is no reason to discard the evidence of the petitioner as P.W1, thereby his evidence is accordingly accepted.

10. But Section 11 of the Act contemplates that on a petition presented by either spouse any marriage may be so declared as null and void if the other spouse contravenes any of the conditions specified in Clauses (i), (iv) and (v) of Section 5 of the Act. The said Clauses of the Act read as under.

5. Conditions for a Hindu Marriage:- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.

11. In fact the above conditions are not applicable to the case on hand. Hence Section 11 of the Act cannot be applied to the facts of the

present case. However, this Court has got ample power to examine the matter under the correct provisions of law and dispose of the matter accordingly.

12. Importantly, it is admitted that there was no consummation of marriage for four years, the respondent-wife has agreed for granting divorce without permanent alimony or any article or money. It is also very important that she is not willing to return back to the matrimonial home. Therefore, the petitioner is entitled for divorce on the ground of desertion under Section 13(1)(ib) of the Act. In the circumstances of the case, non-compliance of the order dated 12.6.2009 need not be taken seriously.

In the result, for the above reasons, the appeal is allowed, granting divorce for the petitioner under Section 13(1)(ib) of the Act on the ground of desertion by the respondent. There shall be no order as to costs.

(ASHUTOSH MOHUNTA, J)

(G.KRISHNA MOHAN REDDY, J)

September 17, 2012.

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