

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

AND

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

F.C.A. Nos.81 of 2022 & 82 of 2022

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

Assailing the common order of the Principal Judge, Family Court-cum-Additional Chief Judge, City Civil Court at Hyderabad dated 07.02.2022 made in O.P. No.762 of 2015 and O.P. No. 1518 of 2013, the present appeals are preferred by the husband.

2. *Vide* aforesaid common order, the Court below dismissed both the O.Ps. filed by the husband seeking a decree for dissolution of marriage with the respondent that took place on 23.06.2005 and for appointing him as guardian of his minor son, Master Anish and for his custody.

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 appeals, in nutshell, are that the marriage of the husband with the wife took place on 23.06.2005 as per their customs and the same was registered with the Sub-Registrar, Ongole on 28.06.2005. The husband hails from

Jami, Vijayanagaram District of A.P. and the wife from Ongole, Prakasam District. The husband joined in ISRO as Scientist in 1995 at Bangalore. The wife is M.Tech graduate. The husband put up his residence with wife at Shan Bhog Layout, Bangalore and the couple led marital life till February, 2007. During the said period, wife did not cooperate for conjugal life and she used to leave the matrimonial home for her parents' house. While so, during their wedlock, they were blessed with a son on 29.04.2009. Three months after delivery, the wife, along with the child, was brought to his home at Bangalore, but after short stay, she left along with the child to her parents' house at Ongole without intimating the husband. In March, 2008, the wife came to his home and after staying for a while, she left the house stating that she has to attend interviews at Hyderabad. While so, in the marriage of brother of the wife in April, 2008, their son was found to be suffering from convulsions. Immediately, husband took the son to the hospital at Bangalore for treatment. While the husband was taking the son for treatment at different hospitals even at Hyderabad, the wife went to London, U.K. without intimating the husband. However, in 2012, she returned from U.K. and when tried to join his company, the husband refused to allow her into the matrimonial home. Upon her complaint to the police and as per their directions, the husband handed over the son to the wife on 24.07.2012. Hence, the divorce O.P. by the husband. Subsequently, he filed O.P. No. 762

of 2015 seeking custody of the child. It is to be noted that initially, the O.P. No. 1518 of 2013 was instituted at Bangalore and pending the same, the wife approached the Hon'ble Supreme Court seeking transfer the O.P. to Hyderabad, which was allowed on 08.08.2013 and the case was transferred to the Court at Hyderabad.

5. Contesting the O.Ps, the wife filed counter contending that the parents of the husband used to interfere with her personal affairs and not allowed her to have privacy with the husband. After the birth of their son, husband visited only once in one and half years' period. It is alleged that the husband was living with some widow lady, which forced her to leave for Hyderabad along with the child. It is stated that with due consent of the husband, she secured job at London and it is the husband who dropped her at the Airport. It is alleged that the husband did not pay any amount for the treatment of the child.

6. Before the Court below, the husband, apart from examining himself as P.W.1, got examined P.Ws.2 to 8 and marked Exs.P.1 to P.85. The wife examined herself as R.W.1 and got marked Ex.R.1. The Court below considering the above said evidence, dismissed both the O.Ps. Aggrieved thereby, the husband is before this Court by way of present appeals.

7. Heard the appellant/husband as party-in-person in both the appeals. No representation on behalf of wife in spite of granting several opportunities. Perused the material available on record.

8. The husband, as party-in-person, has argued that the wife has preferred her career over the matrimonial obligations causing mental torture and agony to him and deserted him and their son without reasonable cause and without consent. While the child was undergoing medical treatment, including certain medical surgeries at Bangalore, the wife preferred to stay at Hyderabad for her career as she had started a software company at Hyderabad. In pursuit of her career, she also went abroad (U.K.) leaving the child with the husband, who was suffering with severe ill-health. Even in her evidence, the wife admitted before the trial Court that she was at Hyderabad from 2008 to 2010 and started Adhoc IT Solutions Pvt. Limited at Hyderabad and she left to U.K. on 09.01.2010 during which time, their child was undergoing treatment at various hospitals for Convulsions disease. It is contended that with scant respect for his public image as Scientist at prestigious organization, wife made serious baseless allegation of illicit relationship with other women, amounting to mental cruelty. Further, the wife has preferred a criminal complaint for the offence under Section 506 IPC against him causing mental trauma and even after lapse of five years, the trial is still under summons stage. It

is lastly contended that since both the parties have been living separately for a long period since 2008 and as fifteen years have already been passed, there is no possibility of reunion of them at this stage and therefore, sought for dissolution of marriage by setting aside the impugned order.

9. As regards the custody of child, which is the subject matter in F.C.A. No. 81 of 2022 arising out of O.P. No. 762 of 2015, the husband has contended that since the son has been living with the wife from 2012 onwards and as the son is accustomed with her company for all these years, he is not pressing the O.P. filed for custody of the child, as it will be detrimental to the health of the child. However, he has fairly consented to continue to deposit the amount of Rs.20,000/- to the account of his son which is being paid by him towards the interim maintenance of the son apart from bearing his medical expenses.

10. In order to save the matrimonial life, this Court has conducted in-camera proceedings with the husband. The husband has asserted that the marriage is retrievably broken down and the spouses cannot now reconcile their differences and live together.

11. Before the trial Court, the husband himself examined as P.W.1 and got examined independent witnesses as P.Ws.2 to 5, 7 & 8. His mother was examined as P.W.6. As many as 82 documents were

marked on his behalf. The evidence on record discloses that after the marriage, differences arose between the parties during 2006 and due to the intervention of elders, the couple lived together and they were blessed with a child on 29.04.2007. Within in one year, the child was found to have been suffering with severe ill-ness related to birth defects. While the child was undergoing treatment at various hospitals at Bangalore and Hyderabad, the wife left for U.K. in pursuit of her career on 09.01.2010. Even the wife as R.W.1 has admitted that she left to U.K. on 09.01.2010 and returned back to India in 2012, by which time, the husband initiated divorce proceedings in 2011. The wife attended the proceedings in August, 2011 at Bangalore and on her filing transfer petition, O.P. No. 1518 of 2013 was transferred to Hyderabad, as per the orders of the Apex Court dated 08.08.2013. Though the evidence of P.Ws.1 & 6 is consistent as to the mental agony caused to them with the attitude of wife and her deserting the husband and leaving India for U.K. in pursuit of her career, on contra evidence was elicited in their cross-examination. Further, R.W.1 in her evidence though made some accusation as to the illicit intimacy of husband with some other women, she could not substantiate the same with any supporting evidence. Having considered the entire evidence at length and having noticed the behaviour of the wife which established the mental cruelty caused to the husband and voluntarily desertion, the trial Court did not allow the O.P. for dissolution of

marriage on the mere ground that *normal wear and tear is general in every marital life and the temporary separation of the spouses for their individual profession, also is becoming normal though not general and it depends upon the mutual understanding between the parties*. The trial Court lost the sight of the fact that the relationship between the couple is strained and the marriage is retrievably broken down. Even in the appeal proceedings, the wife has not evinced any interest to prosecute the proceedings. The husband has categorically established that the wife has deserted him and living separately for the last fifteen years. Therefore, as the spouses cannot now reconcile their differences and live together, this Court is inclined to allow F.C.A. No. 82 of 2022 by dissolving the marriage between the parties. However, the husband has fairly admitted that the child has been living with wife from 2012 onwards and he is not willing to press the F.C.A. No. 81 of 2022 filed for custody of the child. In these circumstances, this Court is inclined to dismiss the F.C.A. No. 81 of 2022.

12. In the result, F.C.A. No. 82 of 2022 is allowed setting aside the orders of the trial Court dated 07.02.2022 in O.P. No. 1518 of 2013. Consequently, the O.P. No. 1518 of 2013 stands allowed dissolving the marriage between the appellant and respondent solemnized on 23.06.2005. However, F.C.A. No. 81 of 2022 stands dismissed, but the appellant is directed to continue to deposit Rs.20,000/- to the

account of his son towards maintenance apart from bearing the medical expenses. It is needless to observe that the appellant is at liberty to approach the trial Court seeking visitation rights of the child. There shall be no order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

DR. CHILLAKUR SUMALATHA, J

M.G. PRIYADARSINI, J

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