

HON'BLE SRI JUSTICE K. LAKSHMAN
AND
HON'BLE SMT. JUSTICE P. SREE SUDHA
FAMILY COURT APPEAL No.196 of 2011

JUDGMENT: *(Per Hon'ble Sri Justice K.Lakshman)*

Heard Sri J. Prabhakar, learned Senior Counsel representing Smt.Kanumuri Kalyani, learned counsel appearing for the appellant and Sri G.Manoj Kumar, learned counsel representing Sri P.Srinath, learned counsel appearing for the respondent. Perused the record.

2. Feeling aggrieved and dissatisfied with the order dated 05.07.2011 in O.P.No.377 of 2009, passed by the learned Judge, Family Court, Secunderabad, appellant-husband preferred the present appeal.

3. Appellant-husband had filed O.P.No.377 of 2009 against respondent-wife under Section 13(1)(ia)(ib) of the Hindu Marriage Act, seeking dissolution of marriage on the ground of cruelty and desertion, contending as follows:

- a) The appellant's marriage with respondent was solemnized on 19.05.2006 at Hyderabad, as per Hindu rites and customs. It is an arranged marriage.
- b) By the time of marriage, respondent's father expired and therefore her mother was not in a position to celebrate the marriage. Therefore, appellant's mother gave an amount of Rs.2 Lakhs to the respondent's family for the performance of marriage. She also presented 15 tulas of gold and other articles.
- c) The said marriage was consummated and they lead marital life happily for a period of one month. Thereafter, respondent started harassing the appellant on petty issues. He has tolerated the same on the hope that the respondent will change her mind.
- d) Respondent started blaming the appellant whenever he speaks with his mother as well as family members and also blaming the appellant that he is maintaining illicit relationship with his sister-in-law.
- e) Therefore, respondent did not even allow the appellant to speak to his mother and family members.

- f) She started demanding the appellant to live in a separate house, for which, the appellant did not agree.
- g) She always wanted the appellant to act on her finger tips and he has to do whatever she says.
- h) She used to harass the appellant and his family members with the help of her sister Smt.Aruna, who is working as a constable at Women Police Station, Begumpet.
- i) With suspicion, respondent used to escort the appellant until he reaches from his working place. If he comes late from the work place due to traffic jam, she used to suspect him and ask for explanation.
- j) Respondent has implicated the appellant and his family members in a false case before Women Police Station, Begumpet where her sister used to work. She has filed a petition under Section 12 of Domestic Violence Act vide D.V.C.No.9 of 2009, against the appellant and the same was allowed.
- k) He has undergone mental and physical stress due to the said cruelty.

- l) Respondent never informed the appellant about her pregnancy and delivery of a child for the last two years.
- m) He does not have any matrimonial relation with respondent from 2007 onwards and she herself is admitting that she lost three months pregnancy in 2006 and giving birth to a child in 2007 is a surprise and she only knows the facts.
- n) Appellant came to know about the said fact only on going through the petition filed by her in D.V.C.No.9 of 2009.
- o) She led a happy married life only for 15 days. Thus, according to the appellant, respondent subjected him to cruelty and deserted him on 15.04.2007 itself.

4. The respondent filed counter opposing the said allegations. Though her father died, her mother and brothers performed her marriage in a grand scale and gave an amount of Rs.3 lakhs towards dowry, 30 tulas of gold and 1 kilogram of silver articles as demanded by the appellant and his mother.

- a) She was able to live peacefully for 15 days.
- b) Thereafter, appellant, his elder brother, his elder brother's wife and his mother started ill-treating her by beating her.

- c) They have repeated the same when she was carrying third month of pregnancy in the year 2006.
- d) At that time, mother of the appellant administered poison in some curry, resulting in an abortion.
- e) The appellant and his mother openly threatened the respondent stating that she should not give birth to any child as their family was happy with the son of elder brother of the appellant.
- f) There was an attempt to kill the respondent at Sanghi Hills.
- g) Again, in the month of April, 2007, respondent became pregnant. When she was carrying third month pregnancy, on 21.04.2007, the mother of appellant and his sister-in-law tried to force an abortion.
- h) When respondent was suffering from acute stomach-ache, they have not even provided water to her.
- i) She was not allowed to drink water in the night by the appellant. On that night, when she was groaning with pains, appellant beat her complaining that she was disturbing his sleep and threatened to leave house next day.

- j) When appellant returned house, found fault with the respondent for not leaving the house.
- k) She was forcibly taken to P.S. Gopalapuram and left her outside the P.S. Then the appellant left away. Since there was no other alternative, respondent called her sister to take her from that place.
- l) Respondent has been living with her brother Meghraj and other brothers.
- m) On 07.10.2007, she gave birth to a baby boy and the said fact was informed to the appellant and his family members. Even then, none of them have turned up to see the respondent and the baby boy.
- n) Appellant is trying to damage the character of the respondent by throwing blame and suspecting her fidelity.

5. To prove the said ground of cruelty and desertion, appellant had examined himself as PW-1 and neighbour as PW-2. He has filed Ex.A-1 to Ex.A-5. To disprove the said allegations, respondent-wife had examined herself as RW-1 and filed Ex.B-1 to Ex.B-3. On consideration of the entire evidence, learned Family Court dismissed the aforesaid O.P., holding that the

appellant failed to prove the said cruelty as well as desertion by producing cogent evidence.

6. Sri J. Prabhakar, learned Senior Counsel appearing for appellant would contend that the learned Family Court failed to consider the evidence on record both oral and documentary. Respondent lived with the appellant for a short period. She has not informed about the birth of a male child. Therefore, question of appellant going to see respondent and her child does not arise. She has implicated the appellant and his family members in a criminal case for the offence under Section 498-A of IPC and she has also filed DVC vide D.V.C.No.09 of 2009. Now, she along with her son had filed a suit against the appellant and others seeking partition of the properties and the same was referred to Lok Adalat for settlement. Appellant-husband has offered an amount of Rs.10 lakhs to his son. Without considering the said aspects, learned Family Court dismissed the said O.P. filed by the appellant.

7. Whereas, learned counsel appearing for the respondent would contend that the appellant failed to prove both the cruelty and desertion by producing cogent evidence. All the allegations

made by him are vague in nature. He has not narrated or stated any specific instance of alleged cruelty by the respondent.

8. In the counter, respondent has specifically pleaded about abortion and giving birth to a child on 07.10.2007. On considering the said aspects only, learned Magistrate has granted an amount of Rs.2,500/- per month to the respondent. He has made serious allegations against the respondent only to get rid of her. On consideration of the entire evidence, learned Family Court dismissed the O.P. filed by the appellant-husband. There is no error in the said order.

9. There is no dispute that the marriage of appellant with respondent performed on 19.05.2006. The marriage was consummated. They were blessed with a male child on 07.10.2007.

10. As discussed supra, appellant did not state any specific instance of alleged cruelty by the respondent. Though he alleged that respondent never allowed him to speak to his mother and his family members, he did not examine any of them. He has examined his neighbour as PW-2, who also deposed vaguely without giving any specific instance. Though the appellant alleged

that respondent did not even allow him to light the lamp in front of his father's photo and to pray, he has not examined his mother or any of his family members. Though the appellant alleged that respondent harassed him and his family members with the help of respondent's sister namely Smt.Aruna, Constable in Women PS, Begumpet, he has not produced any evidence. He has also alleged that respondent did not inform him about giving birth to a child on 07.10.2007.

11. According to him, he has no matrimonial relation with respondent from 07.01.2007 onwards. Respondent has admitted that she lost three months pregnancy in 2006 and therefore, the question of giving birth to another child on 07.10.2007 does not arise. It was a surprise to him. He came to know about the same only on going through the petition filed by the respondent in DVC No.9 of 2009.

12. It is the specific case of respondent that she became pregnant in the year 2006 and when she was carrying third month pregnancy, appellant's mother administered some poison. However, during cross-examination, she admitted that she has not lodged any complaint against her mother-in-law. She has

further contended that appellant and his mother openly threatened her that she should not give birth to any child as they already have a child born to the elder brother of the appellant. Though the respondent alleged that the appellant attempted to kill her at Sanghi Hill, she did not prove the same and she did not lodge any complaint against the appellant with police.

13. According to respondent, again in the month of April, 2007, respondent became pregnant, she was carrying third month. On 21.04.2007, the mother of the appellant and his sister-in-law tried to suffer an abortion. When she was suffering with acute stomach-ache, they did not even provide her with water and appellant did not allow her to drink water. Therefore, she was compelled to leave the house of the appellant. She has lodged a complaint with police, Gopalapuram. She gave birth to a male child on 07.10.2007. Thus, according to the respondent, she got aborted her first pregnancy and she became pregnant second time in April 2007 and by 21.04.2007, she was carrying third month pregnancy. In proof of the same, she has filed Ex.B-2 i.e., scanning report dated 05.04.2007, issued by Tapadia Diagnostic

Centre and Sona Diagnostic and Ex.B-3 i.e., scanning report dated 15.04.2007, issued by Vijaya Ultrasound Scan Centre.

14. Sri J. Prabhakar, learned Senior Counsel for the appellant submits that appellant had filed Criminal Appeal vide No.41 of 2012, challenging the order in DVC No.9 of 2009 and the same was allowed vide order dated 15.05.2012. He further submits that respondent and her son have filed a suit vide O.S.No.112 of 2014 against the appellant and his family members seeking partition and separate possession of the properties. The said suit was referred to Lok Adalat and parties were pursuing compromise. Appellant-husband has offered an amount of Rs.10 lakhs to his son.

15. Recording the said submissions, vide order dated 01.11.2023, this Court referred the matter to Mediation Centre. On conducting Mediation, learned Mediator informed that the mediation is 'unsuccessful'.

16. As discussed supra, the appellant filed the aforesaid O.P. against the respondent seeking dissolution of the marriage on the ground of cruelty as well as desertion. He has to prove the same by producing cogent evidence. The evidence of PW-2 is of no use.

PW-2, except saying that the respondent is having adamant behavior to harass appellant on petty issues, he did not specifically mentioned any instance of cruel act. He has also stated that the respondent is interested to give divorce, on giving compensation of Rs.2 Lakhs to her. He has also stated that respondent abused the appellant and his family members in filthy and un-parliamentary language with support of her sister. But he has not produced any evidence.

17. It is relevant to note that in the petition filed by the appellant vide O.P.No.377 of 2009, it is stated by him that respondent disserted him on 15.04.2007, but in his chief-examination, he has stated that respondent left the matrimonial house by taking all 15 tulas gold and, 2 kgs silver ornaments and Rs.50,000/-. Respondent also demanded an amount of Rs.1 lakh. Whereas, local people decided to pay an amount of Rs.50,000/- towards maintenance and the said amount was received by the respondent before leaving to her parents house. PW-2 also deposed in same lines, but the same was not mentioned in the petition filed vide O.P.No.377 of 2009. Therefore, the versions pleaded are contradictory.

18. It is also relevant to note that in the said O.P., he has contended that respondent deserted him on 15.04.2007 and filed false complaint under DVC. But, during the cross-examination, a suggestion was given to the respondent that she left the matrimonial house on 18.04.2007. Thus, the version of respondent with regard to desertion is contradictory.

19. In Ex.A-3 - legal notice dated 15.04.2007, he has not stated that she left his company on 15.04.2007. He has only stated that he has attempted to commit suicide on 15.04.2007. But, he has not pleaded the same in the aforesaid petition. He has not proved the same by examining any witness including his mother, brother and sister-in-law. Even his pleadings in Ex.A-3 i.e., legal notice, petition in O.P.No.377 of 2009 and affidavit of examination-in-chief are self contradictory. On consideration of the said aspects, learned Family Court dismissed the aforesaid O.P. filed by the appellant.

20. As discussed supra, even according to the appellant, his wife and son have filed the aforesaid suit seeking partition and the same is pending. He has offered an amount of Rs.10 Lakhs. Recording the said submission, coming to the conclusion that

there is settlement, this Court has referred the matter to Mediation and the mediation was 'unsuccessful'.

21. Coming to the aspect of desertion, the learned family court after considering the evidence of PWI held that the question of desertion does not arise when the parties have agreed to live separately. In **Lachman UtamchandKirpalani v. Meena @ Mota**¹, full bench of the Apex Court held that the desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without the other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there: (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*).

22. In **Adhyatma Bhattar Alwar v. Adhyatma Bhattar Sri Devi**², the Apex Court defined the word 'desertion' and held as follows:

¹. AIR 1964 SC 40

². AIR 2002 SC 88

"Desertion in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are:

1. the factum of separation;
2. the intention to bring cohabitation permanently to an end-animus decedendi;
3. the element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period."

23. In ***Kailash Wati v. Ayodhia***³, the Apex Court held that animus deserendi is ought to be established in desertion cases. It is necessary that there must be a determination to put an end to marital relation and cohabitation.

24. In the case of ***Bipin Chander Jaisinghbhai Shah v. Prabhawati***⁴, Apex Court held that the desertion commences when the fact of separation and the animus deserendi co-exist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time; for example, when the separating spouse abandons the marital home with the

³. 1977 PLR 216

⁴. AIR 1957 SC 176

intention, express or implied, of bringing cohabitation permanently to a close.

25. For the act of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi meaning intention of deserting, i.e., bringing cohabitation permanently to an end). Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.

26. In ***Dastane v. Dastane***⁵ and ***Samar Ghosh v. Jaya Ghosh***⁶, the Apex Court elucidated that when assessing the issue of cruelty, considerations must be given to the social stature, educational background, and the societal milieu in which the parties operate. The feasibility of the parties reconciling and resuming conjugal life is also a pertinent factor. Importantly, what may constitute cruelty in one instance may not necessarily meet the criteria in another. The determination of cruelty hinges

⁵. AIR 1975 SC 1534

⁶. (2007) 4 SCC 511

upon the specific facts and circumstances unique to each case.

The Apex Court also had the occasion to examine academic texts,

D. Tolstoy's "The Law and Practice of Divorce and Matrimonial Causes" (Sixth Ed., p. 61);

"Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger."

27. During the proceedings, both the counsels admit that the initiation of a partition case by the son, which was subsequently, referred to Lok Adalat proceedings. A compromise was reached, resulting in an agreement for a sum of Rs. 10,00,000/- Similarly, in an endeavour to explore the potential for reconciliation between the parties, the matter was referred to Mediation on 01.11.2023. Ms. V. Mythili, Advocate, was appointed as the Mediator, and subsequent sessions were conducted on various dates. However, the learned mediator submitted a report indicating that the Mediation is 'unsuccessful'.

28. The threshold of what constitutes a cruel conduct may differ between a man and a woman. What is cruelty for a woman in a given case may not be cruelty for a man. **The concept of cruelty**

differs from person to person depending upon his upbringing, level of sensitivity, financial position, social status, customs, religious beliefs and value system.

29. As discussed supra, Sri J. Prabhakar, learned Senior Counsel for the appellant contended that the appellant and the respondent are staying separately since last 17 years and their marriage is irretrievably broken down, there is no possibility of living together. But the said ground of irretrievable breakdown of marriage is not a ground to seek divorce. Neither, the Family Court nor this Court can grant divorce on the said ground. The said aspect can be considered while coming to a conclusion with regard to alleged cruelty.

30. As stated supra, the appellant has to plead and prove the cruelty with specific instances by producing acceptable legal evidence. In the present case, he failed to do so. On consideration of the entire evidence, both oral and documentary, vide impugned order dated 05.07.2011, learned Family Court dismissed O.P.No.377 of 2009, filed by the appellant. It is a reasoned order and well founded. The appellant failed to make out any case to interfere with the said order. Thus, the present appeal fails and

the same is liable to be dismissed and is accordingly dismissed.

There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the Family Court Appeal shall stand closed.

K. LAKSHMAN, J

P.SREE SUDHA, J

Date: 07.06.2024
VSL