

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

F.C.A.NO.129 OF 2006

Dated: 14.02.2019

Between:

Sri Harshad Gala

...APPELLANT

And

Smt. Illa Gala

...RESPONDENT

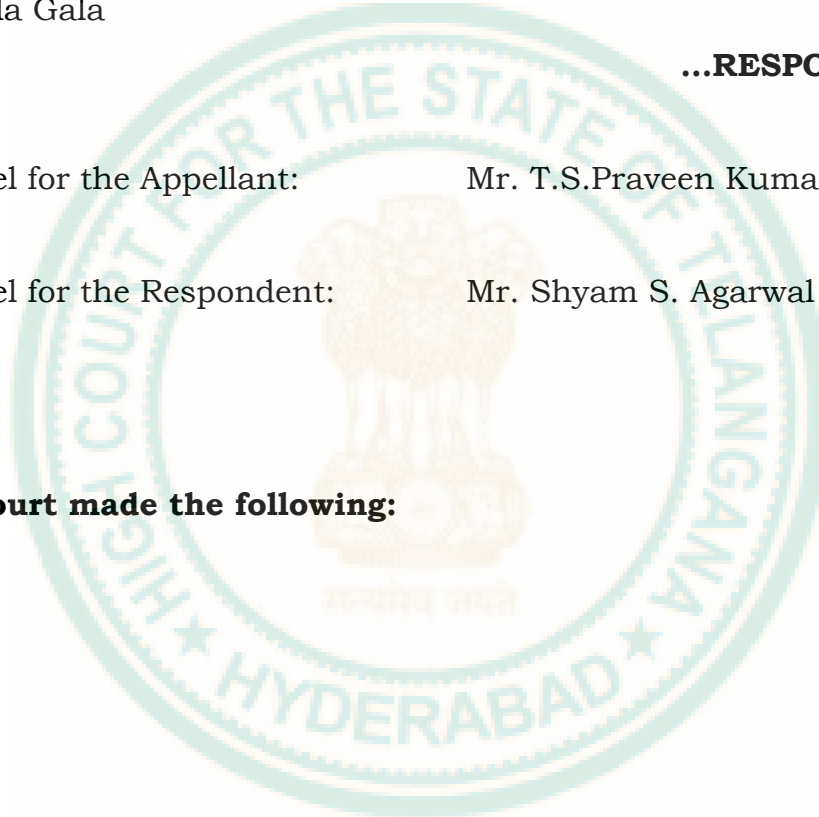
Counsel for the Appellant:

Mr. T.S.Praveen Kumar

Counsel for the Respondent:

Mr. Shyam S. Agarwal

The Court made the following:



THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

F.C.A.NO.129 OF 2006

JUDGMENT: {Per the Hon'ble Sri Justice Raghvendra Singh Chauhan}

Aggrieved by the order dated 12.07.2006 passed by the Family Court, Hyderabad in O.P.No.838 of 2004, in favour of the respondent-wife, the appellant-husband has challenged the legality of the said order.

Briefly, the facts of the case are that the appellant-husband, Harshad Gala, was married to the respondent-wife, Illa Gala, on 29.04.1985 at Mumbai as per the Hindu rites and customs. During their wedlock, they were blessed with a son. However, according to the respondent-wife, the marriage was on the rocks from day one. For, the appellant was neither working, nor looking after the welfare of the family. Moreover, she was subjected to physical and mental cruelty, both by the husband and his family members. Unable to bear the harassment meted out to her, she left the matrimonial home on 14.01.1991, came from Mumbai to Hyderabad, and started living in Hyderabad. In order to support herself and her child, she started a business in hosiery garments and related items. According to the respondent-wife, for three years she did not hear a single word from the appellant-husband. It is only in the year 1994 that he appeared before her, and claimed that he was a

completely changed person. Believing his words to be true, the couple resumed their cohabitation. However, after a lapse of two years, the respondent-wife, to her dismay, discovered that the appellant was going back to his bad habits which she had faced when she was living with him in Mumbai. Due to the physical and mental cruelties again inflicted upon her, and due to the antics of the appellant, even the landlord asked the appellant to vacate the house. Without any rhyme or reason, the appellant-husband left the company of the respondent-wife and returned back to Mumbai. Having waited for another period of three years, for him to return, in the year 2004, the respondent-wife filed a divorce petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955.

In order to support her case, she examined herself as a witness, and submitted a single document.

On the other hand, the appellant-husband also examined himself as a witness, and submitted six documents.

After appreciating the evidence, the learned Family Court granted the decree of divorce in favour of the respondent-wife. Hence, this appeal before this Court.

Mr. T. S. Praveen Kumar, the learned counsel for the appellant, has vehemently contended that the respondent-wife has not been able to make out any case for cruelty against the appellant. Despite the fact the couple had parted their company in the year 2001, the appellant continuously tried to resume his cohabitation with the respondent-wife at

Hyderabad. But, it is the respondent-wife who refused to resume cohabitation. Therefore, desertion is not on his part, but is on the part of the wife. Hence, the learned Family Court could not have given the benefit of a divorce to the respondent-wife. Therefore, the impugned order deserves to be interfered with.

On the other hand, Mr. Shyam S. Agarwal, learned counsel for the respondent-wife, has strenuously argued that according to the respondent-wife, neither she, nor her child was cared for by the appellant-husband while the respondent-wife was living in Mumbai. Since it is the legal and moral duty of the appellant-husband to look after his wife, not only physically but also financially and economically, and since it is the appellant who has financially abandoned the wife, such an act would itself tantamount to an act of cruelty. Moreover, due to the fact that the appellant was non-supportive of the wife and the child, the wife came out and was living by beginning a business in hosiery, and related item. Even if she moved to Hyderabad in the year 1991, for three years the appellant did not care either about his wife, or about his child. Again, without any rhyme or reason, he abandoned the wife and the child on 28.01.2001, and never returned back to them. Therefore, leaving of the wife itself tantamounts to an act of desertion. Since he had abandoned them without any rhyme or reason, the factum of desertion is writ at large. Hence, according to the learned

counsel, the learned Family Court is well justified in granting divorce in favour of the respondent-wife.

Heard the learned counsel for the parties and perused the impugned order.

It is, indeed, trite to state that a husband owes not only a moral duty, but also a legal duty towards the wife and the child. The foremost duty of the husband is to look after, and to care of the physical, psychological and financial aspects of the life of a wife. Thus, it is the legal duty of the husband to provide for the maintenance, the care of the wife and the child. According to the respondent-wife, while she cohabitated with the appellant in Mumbai from 1985 till 1991, i.e. for six years, the appellant was neither employed, nor paid any money for the maintenance of the family. Thus, he had stopped financially supporting the family. This itself would tantamount to cruelty committed towards the wife and the child. Even after joining her in 1994, at Hyderabad, according to the respondent-wife, he did not help her in carrying out the business of hosiery and related item. Thus, he continued to be a physical and financial liability on the family. According to her, just after two years i.e. 1996 till 2001 he again started inflicting physical violence upon her. After 28.01.2001, he abandoned her in Hyderabad and went back to Mumbai. Thus, the respondent-wife has established the fact that she had been physically and mentally harassed by the appellant.

After leaving her on 28.01.2001, the appellant has not submitted any evidence to show that he tried to resume his cohabitation with the respondent-wife. He had left her without any cogent reason. Therefore, the respondent-wife had succeeded in establishing both of her grounds for seeking divorce, namely cruelty and desertion. Hence, this Court does not find any illegality or perversity in the impugned judgment.

For the reasons stated above, this Court does not find any merit in the present appeal. The order dated 12.07.2006, in O.P.No.838 of 2004, passed by the Judge, Family Court, Hyderabad, is, hereby, confirmed. The appeal is dismissed, accordingly.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T.AMARNATH GOUD, J)

14th February 2019
RRB