

**THE HON'BLE ACTING CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN**

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

F.C.A. No.252 of 2012

JUDGMENT: *(Per Hon'ble Dr.Justice Shameem Akther)*

This Family Court Appeal is filed under Section 19 of the Family Courts Act, 1984, aggrieved by the order dated 24.11.2011 passed in O.P.No.778 of 2008 by the learned Judge, Family Court, Ranga Reddy District at L.B.Nagar, Hyderabad.

2. The appellant herein is the petitioner and the respondent herein is respondent in O.P.No.778 of 2008 before the Family Court. The parties hereinafter referred to as appellant/husband and respondent/wife.

3. The facts in brief, leading to filing of this appeal, are that the appellant/husband filed petition against the respondent/wife under Section 13(1)(ia) of Hindu Marriage Act, 1955 seeking divorce on the ground of cruelty. It is stated in the petition that the marriage between the appellant/husband and respondent/wife was performed on 21.08.2005 at Prime Garden Function Hall, Saroornagar, Ranga Reddy District, according to Hindu rites and customs. Thereafter, marriage was consummated and they setup matrimonial home at Prashanthi Hills, Meerpet Village, Saroornagar Mandal, Ranga Reddy District. The respondent/wife never evinced any interest to stay with the appellant/husband at matrimonial house and she wanted to go back to her parents' house. While-so, on 08.09.2005, the respondent/wife left the matrimonial house

without intimating the appellant/husband and went to her parents' house at Swarna Village, Prakasam District and that the appellant/husband came to know about the same when he enquired with the relatives of the respondent/wife and called up her parents. Whenever the appellant/husband made telephone calls to speak with respondent/wife, he used to get reply that she was not available. The appellant/husband went to Swarna Village, Prakasam District in October, 2005 for Dasara festival. The respondent/wife did not speak to him during his stay for three days. The respondent/wife and her mother used to visit their relatives in Hyderabad at Ramakrishnapuram without intimating the appellant/husband and used to stay there for three to four days. The respondent/wife never listened to the advice of the appellant/husband and she continued visiting the place of her relatives without any intimation. The conduct of the respondent/wife demonstrates that she does not want to lead matrimonial life with the appellant/husband.

4. The appellant/husband learnt that the respondent/wife gave birth to a male child on 11.06.2006 and thereafter the father of respondent/wife assured the elders that respondent/wife would come to Hyderabad for naming ceremony and it was held on 04.09.2006. Finally, on 08.09.2006, after an argument, the respondent/wife left the matrimonial house and on enquiry he came to know that the respondent/wife and her family had vacated the house at Swarna village. The appellant/husband was subjected to severe mental agony and deprived of conjugal society and consortium on account of unacceptable acts of the respondent/wife

and the respondent/wife never cared the appellant/husband and totally neglected and ignored the appellant/husband. The respondent/wife never fulfilled the marital obligations and also threatened that she will cause physical harm to herself and that she would foist a false case. The respondent/wife did not change her ways despite the best efforts on the part of the appellant/husband. There is no chance or even a remote possibility of respondent/wife changing her ways. The cruel behavior, negligence and indifferent and unreasonable conduct of respondent/wife cannot be changed.

5. The respondent/wife filed counter denying all the allegations except admission of marriage with the appellant/husband. In the month of June, 2005, the appellant/husband and his family members went to see the respondent/wife and on the very next day they informed that they liked her and the parents of respondent/wife agreed to give Rs.1,25,000/- cash as dowry, 10 tolas gold and silver items and performed the marriage in a grand manner by incurring an amount of Rs.5,00,000/-. After the marriage, the respondent/wife joined the company of appellant/husband and nuptial ceremony was arranged at the house of the appellant/husband. They lived happily for one month and after one month the appellant/husband and his family members started harassing the respondent/wife for no fault. As respondent/wife was not feeling well, it is only with the consent and permission of the appellant/husband and his mother, went to her parents' house and thereafter pregnancy was confirmed during her treatment at her parents' house and the same was informed to

the appellant/husband and his family members and that the respondent/wife was advised to take complete bed rest. Thereafter, due to pressure, the respondent/wife was sent to matrimonial house on 10.11.2005. Thereafter, on the instigation of his mother and sister, the appellant/husband started harassing the respondent/wife to do all domestic works and on some petty issue during her 8th month pregnancy, the respondent/wife was necked out mercilessly from the house of appellant/husband. Thereafter, in the year 2006 during her 9th month pregnancy, srimantham was performed and though appellant/husband and his parents were invited, no one attended the function from the appellant/husband. Thereafter, the respondent/wife gave birth to a male child and Sri K.Uma Maheshwar Rao, the elder brother of appellant/husband called the respondent/wife and requested her to perform the naming ceremony at the house of appellant/husband and the same was agreed by the parents of respondent/wife and the ceremony was performed by the father of respondent/wife by incurring all the expenditure. Thereafter, on 06.09.2006, when the respondent/wife requested the appellant/husband to bring milk powder to feed the child, he quarreled with respondent/wife and beat her mercilessly and necked out her from his house and since then the appellant/husband did not care to see the respondent/wife or the child.

6. Basing on the pleadings put-forth by the appellant/husband and respondent/wife, the learned Judge, Family Court framed the issue: "Whether the appellant/husband is entitled for decree of divorce on the ground of cruelty?"

7. Having considered the entire evidence on record, the learned Family Court Judge was pleased to hold that there is a chance of re-union between the parties to the litigation. The desertion and cruelty on the part of the respondent/wife is not proved and ultimately was pleased to dismiss the divorce application. Aggrieved by the said dismissal, this present appeal is filed.

8. Heard Sri Ch.B.R.P. Sekhar, learned counsel for appellant/husband and perused the record. None appeared today for the respondent/wife.

9. Learned counsel for the appellant/husband would contend that the respondent/wife left the company of the appellant/husband without any reason. The appellant/husband was ill-treated by the respondent/wife and her parents. The marriage between the parties has been irretrievably broken down. Even the respondent/wife did not enter into the witness box to substantiate her contentions. The acts of the respondent/wife amounts to cruelty and desertion and ultimately prayed to set aside the impugned order and allow the divorce application as prayed for.

10. In view of the submissions made, the point for determination is:

“Whether the appellant/husband is entitled for divorce on the ground of cruelty as envisaged under Section 13(1)(ia) of Hindu Marriage Act, 1955?”

11. **POINT**: It is pertinent to state that the appellant/husband deposed as PW.1 and got marked Ex.A.1-marriage invitation card and Ex.A.2-marriage photos. On behalf of respondent/wife, none

was examined. The specific case of the appellant/husband is that the marriage between him and the respondent/wife was performed on 21.08.2005 at Prime Garden Function Hall, Saroornagar, Ranga Reddy District, as per Hindu rites and customs. There is no dispute with regard to the marriage and the parties begetting a male child. The appellant/husband is seeking divorce on the ground of cruelty and desertion and irretrievable break down of marriage. The evidence of appellant/husband/PW.1 is that the respondent/wife had deserted him and finally on 06.09.2006 she left his house without information. The respondent/wife and her mother used to visit their relatives in Hyderabad without his knowledge and information and stay there for three to four days. The respondent/wife threatened the appellant/husband that she will file criminal cases etc. Admittedly, no criminal case for the offence under Section 498-A IPC etc., or any application seeking maintenance was/is filed by the respondent/wife. In the counter filed by the respondent/wife, she has specifically stated that she is ready for reunion. When a specific question was put to the appellant/husband in the cross-examination, he declined to reunite with the respondent/wife. As per the evidence on record, the appellant/husband did not make any effort for reunion. In the counter, the respondent/wife came up with certain allegations of ill-treatment etc., against the appellant/husband and his family members and also specifically stated that the appellant/husband did not procure even milk powder for the new born baby and the appellant/husband did not bear any maintenance/delivery expenses of the respondent/wife. It is culled out from the record

that both parties are living separately for a considerable time. There is no persuasion by the appellant/husband to take back the respondent/wife to his company, though she is ready and willing to do so. It is relevant to refer the decision rendered by the Hon'ble Apex Court in ***Darshan Gupta v. Radhika Gupta***¹, wherein it was held as follows:

*"**Para 52:** Even otherwise, in the facts and circumstances of this case (which are being highlighted while dealing with the appellant's next contention), we cannot persuade ourselves to grant a decree of divorce on the ground of irretrievable breakdown of marriage, for the simple reason that the breakdown is only from the side of the husband. The wife Radhika Gupta has consistently maintained that she was intensely concerned with her future relationship with her husband and that her greatest and paramount desire was to rejoin her husband and to live with him normally in a matrimonial relationship once again. Since in the present case, the respondent does not consent to the severance of matrimonial ties, it may not be possible for us to accede to the instant prayer made at the hands of the learned counsel for the appellant."*

12. In the instant case, the respondent/wife is ready to join the company of the appellant/husband. The appellant/husband is reluctant and further there are no efforts from his side to take back the respondent/wife and lead a happy marital life. The respondent/wife did not consent to the severance of marital ties. The differences and misunderstandings are common in marital life and are required to be sorted out by speaking one to one or involving elders in the family. In the instant case, no such efforts were made by both the parties. It is also made out from the

¹ (2013) 9 SCC 1

record that the respondent/wife has greatest and paramount desire to join her husband and lead a happy marital life. Therefore, it cannot be held that the marriage between the parties is irretrievably broken down. Further, the acts of the respondent/wife do not constitute cruelty to grant the relief as prayed for.

13. The learned Family Court Judge, had elaborately dealt with all the aspects in issue and rightly declined to grant divorce. The findings recorded by the learned Judge are in consonance with the record. There is no infirmity or illegality in the impugned order.

14. In the result, the Appeal is devoid of merits and accordingly dismissed. Pending Miscellaneous Petitions, if any, shall stand closed. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 19.06.2019

Grk/scs