

**IN THE HIGH COURT FOR THE STATE OF TELANGANA:  
HYDERABAD**

**\* \* \***

**FAMILY COURT APPEAL No.141 of 2013**

Between:

K.Sekhar Rao.

Appellant

VERSUS

K.Rekha.

Respondent

**JUDGMENT PRONOUNCED ON: 23.04.2024**

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**

**AND**

**THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? : **Yes**

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**P.SAM KOSHY, J**

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**AND**  
**THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**  
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Respondent

! Counsel for Appellant(s) : Ms. K. Swarna Seshu

^Counsel for the respondent(s) : Mr. Ramesh Babu Peddapalli

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> HEAD NOTE:

? Cases referred

- 1) AIR 2023 SUPREME COURT 4186
- 2) Family Court Appeal No.34 of 2022
- 3) (2006) 4 SCC 558

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**  
**AND**  
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**FAMILY COURT APPEAL No.141 of 2013**

**JUDGMENT:** (per the Hon'ble Sri Justice **P. Sam Koshy**)

Heard Ms. K. Swarna Seshu, learned counsel for the appellant/husband and Mr. Ramesh Babu Peddapalli, learned counsel for the respondent/wife.

**2.** The present is an appeal under Section 19 of the Family Courts Act, 1984 (for short, 'the Act') preferred by the appellant/husband challenging the order dated 20.06.2011 passed by the Judge, Family Court, Secunderabad (for short, the 'Family Court') in O.P.No.423 of 2007.

**3.** Vide the impugned judgment, the Family Court has dismissed a petition filed by the appellant/husband under Section 13(1)(ia) and (iii) of the Hindu Marriage Act, 1955 (in short, the 'Act of 1955') seeking for divorce on the ground of cruelty and also on the ground that the respondent/wife was suffering from some mental disorder.

**4.** The brief facts which led to filing of the present appeal are that the appellant/husband and the respondent/wife got

married on 02.07.1999 as per the Hindu rites and customs. The appellant/husband and respondent/wife out of their said marriage were blessed with a male child on 20.03.2000. Immediately after birth of the male child it appears that the relationship between the appellant/husband and respondent/wife got strained and in spite of best efforts made by family elders and family members on repeated rounds of mediation, the relationship between the two could not reconcile and the respondent/wife is said to have left the company of appellant/husband and went and started staying with her parents since the year 2008. As such, now it is almost sixteen (16) years that the appellant/husband and the respondent/wife have been staying separately without any conjugal relationship.

**5.** Initially the petition was filed for judicial separation under Section 10 of the Act of 1955. Later, it was amended and converted into a petition seeking divorce on the ground of cruelty and on the ground of alleged mental disorder of the respondent/wife under Section 13(1)(ia) and (iii) of the Act of 1955. After conclusion of the pleadings and evidences which were recorded on either side, the Family Court concluded that the appellant/husband has failed to lead sufficient evidences to establish the grounds on which he is seeking relief of divorce

and finally the O.P. was dismissed vide the impugned order leading to filing of the present appeal.

**6.** Today when the matter was heard at length in the presence of counsel representing on either side, there were allegations and counter allegations being leveled by both the sides and both sides have taken a firm stand that it would be difficult now to stay together as husband and wife after so long a period of staying separately for the last sixteen (16) years.

**7.** The appeal was filed in the year 2013 and since 2013 also it is more than eleven (11) years during which time there were all efforts made, but failed in reunion of the appellant/husband and respondent/wife. The male child born to the appellant/husband and respondent/wife on 20.03.2000 is since grownup and has become an adult; is now staying with the appellant, the father.

**8.** Learned counsel for the appellant stressed hard upon the behavioral attitude of the respondent/wife and contended that it was literally impossible to cohabit with the respondent/wife. The learned counsel for the appellant had referred to various instances where the respondent/wife is said to have lost her cool and created a hysterical situation and atmosphere in the house

and finally prayed that since admittedly for the last sixteen (16) years they have been staying separately and even in spite of efforts and several rounds of mediation, there were no chances of reunion of the appellant/husband and respondent/wife. As such, the marriage has become irretrievable and therefore in the larger interest of both the parties to the dispute, it is prayed that they be given a decree of divorce so that the issues between the two can get settled for all times to come.

9. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture, to refer to a couple of decisions on this subject matter. The Hon'ble Supreme Court in the case of **Smt. Roopa Rani vs. Kamalnarayan Soni**<sup>1</sup> in paragraph Nos.7, 8, 9, 10, 14, 15, 17 and 18 has held as under:

“7. We would like to emphasize that an element of subjectivity has to be applied albeit, what constitutes cruelty is objective. Therefore, what is cruelty for a woman in a given case may not be cruelty for a man, and a relatively more elastic and broad approach is required when we examine a case in which a wife seeks divorce. Section 13(1) of the Act of 1955 sets contours and rigours for grant of divorce at the instance of both the parties. Historically, the law of divorce was predominantly built on a conservative canvas based on the fault theory. Preservation of marital sanctity from a societal perspective was

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<sup>1</sup> AIR 2023 SUPREME COURT 4186

considered a prevailing factor. With the adoption of a libertarian attitude, the grounds for separation or dissolution of marriage have been construed with latitudinarianism.

**8.** Courts must adopt a holistic approach and endeavor to secure some measure of socio-economic independence, considering the situation, case and persons involved. An empathetic and contextual construction of the facts may be adopted, to avert the possibilities of perpetuating trauma - mental and sometimes even physical - on the vulnerable party. It is needless to say that the courts will be guided by the principles of equity and may consider balancing the rights of the parties. The Court, while applying these provisions, must adopt 'social-context thinking', cognisant of the social and economic realities, as well as the status and background of the parties.

**9.** This concept of "social justice adjudication" has been elaborately dealt with by this Court in *Badshah v. Urmila Badshah Godse and Another*, (2014) 1 SCC 188 = 2014 (5) ALT 19.1 (DN SC):

"14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

"It is, therefore, respectfully submitted that 'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker

party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.” [Keynote address on “Legal Education in Social Context” delivered at National Law University, Jodhpur on October 12, 2005, available on <http://web.archive.org/web/20061210031743/http://www.nlujodhpur.ac.in/ceireports.htm> [last visited on 25-12-2013]]

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from “adversarial” litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.



18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — libre recherche scientifique i.e. “free scientific research”. We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 CrPC, to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming “wife” under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard Journey from Shah Bano [Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 : 1985 SCC (Cri) 245 : AIR 1985 SC 945] to Shabana Bano [Shabana Bano v. Imran Khan, (2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873 : AIR 2010 SC 305] guaranteeing maintenance rights to Muslim women is a classical example.”

**(Emphasis supplied)**

**10.** On the question of burden in a petition for divorce, burden of proof lies on the petitioner. However, the degree of probability is not one beyond reasonable doubt, but of preponderance.

**14.** In Sivasankaran v. Santhimeenal, 2021 (10) SCALE 477, while exercising the power under Article 142 of the Constitution of India, had highlighted various facets which have to be kept in mind while granting divorce:

“6. The ground which is often taken to oppose such a decree of divorce, apart from the absence of legislative mandate, is that the very institution of marriage is distinctly understood in different countries. Under the Hindu Law, it is sacramental in character and is supposed to be an eternal union of two

people - society at large does not accept divorce, given the heightened importance of marriage as a social institution in India. Or at least, it is far more difficult for women to retain social acceptance after a decree of divorce. This, coupled with the law's failure to guarantee economic and financial security to women in the event of a breakdown of marriage; is stated to be the reason for the legislature's reluctance to introduce irretrievable breakdown as a ground for divorce - even though there may have been a change in social norms over a period of time. Not all persons come from the same social background, and having a uniform legislative enactment is thus, stated to be difficult. It is in these circumstances that this court has been exercising its jurisdiction, despite such reservations, under Article 142 of the Constitution of India.

**15.** Secondly, the court must also keep in mind that the home which is meant to be a happy and loveable place to live, becomes a source of misery and agony where the partners fight. When there are children they become direct victims of the said fights, though they may practically have no role in the breakdown of marriage. They suffer irreparable harm especially when the couple at loggerheads, remain unmindful and unconcerned about the psychological and mental impact it has on her/him. Way back in 1982, this Court in *Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka*, (1982) 2 SCC 544, observed:

“29.... A broken home, however, has a different tale to tell for the children. When parents fall out and start fighting, the peace and happiness of home life are gone and the children become the worst sufferers. It is indeed sad and unfortunate that parents do not realise the incalculable harm they may do to their children by fighting amongst themselves. The husband and the wife are the

persons primarily responsible for bringing the children into this world and the innocent children become the worst victims of any dispute between their father and the mother. Human beings with frailties common to human nature, may not be in a position to rise above passion, prejudice and weakness. Mind is, indeed, a peculiar place and the working of human mind is often inscrutable. For very many reasons it may unfortunately be not possible for the husband and wife to live together and they may be forced to part company. Any husband and wife who have irreconcilable differences, forcing them to part company, should, however, have sense enough to understand and appreciate that they have their duties towards their children. In the interest of the children whom they have brought into existence and who are innocent, every husband and wife should try to compose their differences. Even when any husband and wife are not in a position to reconcile their differences and are compelled to part, they should part in a way as will cause least possible mischief to the children.

**(emphasis supplied)**

**17.** For a decade and half, the parties have been living separately. As fairly stated at the Bar, the marriage does not survive any longer, and the relationship was terminated otherwise except by a formal decree of divorce. The status quo continues, awaiting an approval from this Court.

**18.** The aforesaid facts would certainly make out a case for divorce and thus, the ratio laid down by a Constitution Bench of this Court in *Shilpa Sailesh v. Varun Sreenivasan*, 2023 (6) SCALE 402 would be applicable on all fours:”

**10.** The Division Bench of this very High Court in **Family Court Appeal No.34 of 2022** decided on 11.08.2023 in paragraph Nos.14 to 16 has held as under:

“14. It is contended by the learned counsel for the husband that the marriage has broken down irretrievably and there cannot be any possibility of reunion.

15. The Apex Court in **Naveen Kohli v. Neelu Kohli**<sup>2</sup>, at para Nos. 72 to 76, observed as under:-

“72. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented the petition for divorce, it can well be presumed that the marriage has broken down. The Court, no doubt, should seriously make an endeavour to reconcile the parties. Yet, if it is found that the break down is irreparable, then divorce should not be withheld. The consequence of preservation in law of the unworkable marriage which has long ceased to be effective or bound to be a source of greater misery for the parties.

73. A law of divorce based mainly on fault is inadequate to deal with a broken marriage. under the fault theory, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute.

74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous

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<sup>2</sup> (2006) 4 SCC 558

separation, it may fairly be surmised that matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever the tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of solvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.”

16. Even during the pendency of the appeal, though attempts were made by this Court for conciliation, the parties did not come forward for reunion, which shows that the marriage between the parties has irretrievably broken down. As held by the Apex Court, when the marriage between the parties has irretrievable broken down, any attempt to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties for the rest of their lives.”

**11.** In the light of the aforesaid decision of the Hon’ble Supreme Court and also of this very High Court and also conscious of the statutory provisions particularly under Section 13(1)(ia) and (iii) of the Act of 1955 where the ground of marriage having been irretrievably broken down not being a ground

available for divorce, but the factual details as has been narrated by the learned counsel on either side, both on behalf of the husband as well as counsel representing the wife, there seems to be a consensus on both the parties that there is no possibility whatsoever of reunion. Best of all the efforts have failed and there is no interaction whatsoever between the two spouses for the last sixteen (16) years. The appeal itself is pending consideration for more than eleven (11) years and in between also there has been no cordial interaction between the two as per the version of the learned counsel appearing on either side. Even if the present appeal is not decided in favour of the husband and is deciding without granting decree of divorce, two spouses have decided not to stay together and to live separately and have taken a firm stand on that with the nature of allegations which were casted upon the respondent/wife by the appellant/ husband for annoyance and the respondent/wife has aggravated in taking up a firm stand not to live together.

**12.** Admittedly, for more than a decade and half, the parties have been staying separately and the marriage between the two does not survive any longer. Both of them have literally terminated the relationship, both of them have accepted the fact that there is no chance of reconciliation or reunion any further.

In the factual circumstances taking into consideration the view taken by the Hon'ble Supreme Court in the case of **Smt. Roopa Rani** (supra), we are of the firm view that present is one such case which certainly makes out a ground for issuance of decree of divorce on the ground of marriage having irretrievably broken down. Once when the marriage has irretrievably broken down, parties having accepted the fact that their life together is unworkable, the relationship between the two has emotionally died out and is beyond salvation, we are of the firm view that the only solution left is dissolution of the marriage.

**13.** Thus, for the reason the marriage has broken down irretrievably, the parties have been staying separately for more than a decade and half (more than sixteen (16) years to be precise) the period of time lapsed since they had last cohabited together, coupled with the nature of allegations made by the parties against each other giving rise to a cumulative impact on the personal relationship between the two and above all, the numerous efforts of reconciliation and reunion having failed, we are of the considered opinion that there is no need to further continue with the relationship of a mere status of marriage without both the parties living together for so long a period and thus during this period of time itself both the parties have

mentally decided and settled in their respective ways in their lives.

**14.** For all the aforesaid reasons, we are inclined to set aside the judgment passed by the Family Court in O.P.No.423 of 2007. As a consequence, the appeal stands allowed and the marriage between the appellant/husband and the respondent/wife took place on 02.07.1999 stands dissolved and decree of divorce between the appellant/ husband and respondent/wife is ordered to be passed. No costs.

**15.** As a sequel, miscellaneous applications pending if any, shall stand closed.

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**P.SAM KOSHY, J**

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**SAMBASIVARAO NAIDU, J**

Date: 23.04.2024

**Note:** LR Copy to be marked.

B/o.GSD