

+C.M.A. No.443 OF 2015

% 14-02-2024

Smt. Enumula Vijaya Laxmi

....Appellant

Vs.

\$ Enumula Raghu Veera Reddy

.... Respondent

!Counsel for the appellant : S. Vijay Prashanth

Counsel for the respondent : P. Sriharinath

<Gist :

>Head Note:

? Cases referred:

2016(4) ALD 584

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

C.M.A. No.443 OF 2015

Between:

Smt. Enumula Vijaya Laxmi

....Appellant

Vs.

Enumula Raghu Veera Reddy

.... Respondent

ORDER PRONOUNCED ON: 14.02.2024

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

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

NAMAVARAPU RAJESHWAR RAO, J

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

CIVIL MISCELLANEOUS APPEAL No.443 OF 2015

JUDGMENT: (Per Hon'ble Sri Justice Namavarapu Rajeshwar Rao)

This Civil Miscellaneous Appeal is filed by the appellant/petitioner aggrieved by the order passed by the Senior Civil Judge, Sangareddy, in H.M.O.P. No.6 of 2012, dated 30.03.2015. The petitioner is the wife of the respondent/husband in the said H.M.O.P.

2. For convenience, the parties are hereinafter referred to as they are arrayed before the Court below.

3. Heard Sri S. Vijay Prashanth, learned counsel appearing for the appellant, and Sri Palle Sri Harinath, learned Counsel appearing for the respondent.

4. The petitioner/wife filed the above H.M.O.P. under Section 13(i)(a) of the Hindu Marriage Act, 1955 for the dissolution of her marriage with the respondent/husband on the ground of cruelty.

4(1) The specific allegation made by the petitioner against the respondent is that their marriage was solemnized on 06.05.2007 as per Hindu Rites and Customs. At the time of marriage, the petitioner's parents presented cash of Rs.2,00,000/- towards dowry, 20 tolas of Gold and half K.G. Silver on demand made by the respondent. After one month of their marriage, the respondent's family members started demanding the petitioner to bring some more money from her parents to purchase gold bangles and bracelet. The petitioner expressed her inability to get the said amount her parents. Thereupon, the petitioner and her mother were insulted by the respondent and his family members.

4(2) It is further alleged that in the month of December 2007, the mother of the respondent made the petitioner to take Ayurvedic medicine (Chetulamandu) forcibly, due to which, her health was badly affected. However, during the month of May 2008, the petitioner became pregnant, but neither the respondent nor his family members took care of the petitioner. The respondent used to force the petitioner to have satisfy him physically like anything (This Court is not inclined to incorporate the abusive words as they were mentioned in the petition) though she was pregnant. The respondent used to take

money from her in order to consume alcohol and used to come to the house in the late nights. The respondent harassed the petitioner and caused mental and physical agony to her, though the Doctor advised her to take bed rest on account of pregnancy. On 13.12.2008, the petitioner was admitted to Yashoda Hospital, Hyderabad, due to high blood pressure and she was kept in ICU for a certain period. The respondent never cared about the ill-health of the petitioner at any point of time. Later, the petitioner delivered a female child. The respondent did not even pay the medical expenses for the petitioner's treatment. The respondent and his family members refused to attend the cradle ceremony of the child, which was held in the month of January 2009.

4(3) It is further alleged that in the month of February 2010, the petitioner once again conceived and scanning report confirmed twins in the womb. When the petitioner informed about the same to the respondent, he forced her to undergo an abortion. As such, she underwent an abortion during the month of May 2010. The Doctor who attended to the petitioner, informed the respondent that there should not be physical contacts for two months to avoid infection, which may lead to the removal of uterus. But, the respondent forced the petitioner

to have physical contact with him. Consequently, the petitioner has got severe bleeding by way of clotting.

4(4) The respondent did not even take the petitioner to the doctor, though she suffered from serious stomach ache. The respondent used to abuse the petitioner in filthy language to satisfy him, though she was sick. The respondent even started suspecting her fidelity. On one occasion during the month of July, 2011 the respondent beat the petitioner severely and took away two wheeler vehicle of the brother of the petitioner. She lodged a complaint with the police against the respondent.

4(5) It is further alleged that on 16.10.2011, during night time, the respondent made an attempt to take away the daughter from the custody of the petitioner in a forcible manner and when the petitioner questioned the behaviour of the respondent, she was assaulted in a brutal manner. She lodged another complaint with the police, BDL, Bhanoor, on 17.10.2011 and requested them to provide protection to her and her daughter. The petitioner and the respondent have been living separately away from each other since 12.06.2011. The approach of the respondent towards the petitioner and their daughter is a sadistic one besides being cruel in nature. She is

unable to tolerate the physical assaults made by the respondent and also ill-treatment. Hence, the petition.

5. The respondent filed a counter denying the allegations made in the petition and contended that the alleged grounds of cruelty and ill-treatment were invented by the petitioner to obtain divorce. The respondent is a financially sound person and there is no need for him to depend on the income of the petitioner. He paid Rs.1,30,000/- during cesarean operation of the petitioner and also spent an amount of Rs.1,50,000/- to celebrate the first birth day of their daughter. The petitioner left the conjugal society of the respondent without his knowledge. She has been living with her mother and brother and not allowing the respondent to see their daughter. There is no fault on the part of the respondent, much less the alleged ground of cruelty. The respondent is ready to accept the petitioner in his conjugal society even now. Accordingly, prayed to dismiss the petition.

6. To prove the petitioner's case, she was examined as PW.1 and the mediator as PW.2. On behalf of the respondent, he was examined as RW.1 and another as RW.2. No documents were exhibited on either side.

7. On appreciation of evidence available on record, the Court below dismissed the petition observing that except the evidence of PW.1, there was no corroborative evidence by any other independent evidence.

8. It has been contended by the appellant that the Court below failed to appreciate the evidence of appellant/PW.1, and PW.2 clearly corroborated the evidence of PW.1. The Court below simply ignored the evidence of PWs 1 and 2, and relied upon the evidence of RWs 1 and 2 and dismissed the O.P.

9. Per contra, learned counsel appearing for the respondent contended that the Court below rightly found no evidence on behalf of the petitioner and rightly dismissed the petition, which requires no interference from this Court.

10. The trial Court held that admittedly, there is no dispute about the relationship between the parties and performance of their marriage on 06.05.2007. The allegations made in the petition that the petitioner was subjected to cruelty by the respondent to fulfill the unlawful demand of payment of additional dowry and for sexual harassment even when her health was not cooperating, and as such, they are living separately away from each other since 12.06.2011. To prove her

case, she herself examined as PW.1 and she reiterated the contents of the petition. She deposed that on 10.07.2008, she secured a job in BHEL and she was forced to take quarter allotted by the employer though she was pregnant and intend to live at the place of her in-laws. The respondent made her to attend on all domestic works without engaging any servant maid. The respondent forced her to have physical contact for two or three times daily though she was pregnant and did not allow her to sleep till 2.00 or 3.00 a.m. The respondent did not consider her health condition with regard to severe stomach pain and forced her to participate in the physical contact in an unusual manner. She also deposed that the respondent used to take money from her for the purpose of purchasing alcohol by threatening her with dire consequences. She further deposed that she underwent abortion in the month of May 2010 on medical advice and thereafter she suffered ill-health including heavy bleeding and during that time also, the respondent forced her to have physical contact with him and subsequently, the respondent started suspecting her fidelity and demanded her to handover FDR worth Rs.1,00,000/- that was made in the name of their minor daughter and the respondent took an amount of Rs.10,000/- from her for celebrating the first birth day of their

daughter, but utilized the said amount for purchasing liquor bottles and she left to her parents' house on account of intolerable torture and cruelty meted out by the respondent and she got mediated her matrimonial affair through PW.2, who advised the respondent to mend his behaviour, but in vain.

In the cross-examination she denied the suggestion that the respondent never demanded the additional dowry from her parents and that the said ground was created for the purpose of the petitioner and that she threatened the respondent to commit suicide if he did not give the consent for abortion and took the decision to undergo abortion in respect of her second pregnancy contrary to the medical advice.

11. The petitioner, in support of her case, also examined PW.2, who is junior paternal uncle of the petitioner and he said to be one of the mediators. He deposed that he conducted mediations on two occasions to reconcile the matrimonial affair between the petitioner and respondent. He further deposed that PW.1 informed him that the respondent used to come to the house by consuming alcohol and he advised the respondent to mend his behaviour and advised them to lead conjugal life without any disputes.

12. The respondent was examined as RW.1 and he deposed the reiterating the contents of counter. He deposed that there was no demand of dowry even at the time of marriage or additional dowry subsequently at any point of time. According to him, the brother and mother of PW.1 used to visit the matrimonial home frequently and they developed eyesore on the salary of PW.1 by expressing the problems one way or the other in order to take her salary and PW.1 got pledged gold ornaments to purchase transport vehicle for her brother and she used to act on the tunes of her mother and brother. He further deposed that PW.1 has undergone abortion on the advice of her mother by taking consent from him in a forcible manner and she also left from the matrimonial home at the instance of her mother and brother and got vacated the quarter on 22.11.2011 without intimation to him. In the cross-examination, he stated that they resided together at Dhannaram village for about one year and later shifted to quarter allotted to PW.1 by the employer in BHEL township, and that he is not doing any job though studied ITI course, but earning sufficient income by doing agriculture.

13. In support of his contention, the respondent also got examined RW.2 , who is one of the elders to the marriage of the petitioner and the respondent. RW.2 supported the evidence of RW.1.

14. A perusal of the impugned order goes to show that the Court below observed that the testimony of PW.1 is that on 03.07.2011, the respondent came to her mother's house along with PW.2 and a panchayath was held at that time and she informed PW.2 about ill-treatment and harassment meted out by the respondent. It is not in dispute that the parties have been living separately since 12.06.2011. In general, no woman, who is having children, cannot dare to live in isolation without the security of her husband. In the present case, the petitioner has gone to the extent of taking divorce from her husband, it would mean that how much harassment she has undergone by the ill-treatment of her husband without caring that she would be belittled in the society as a divorcee.

15. During the course of arguments, learned counsel for the petitioner brought to the notice of this Court that the respondent illegally married another woman during the pendency of this appeal and to that effect he has shown the

photograph, but the learned counsel for the respondent did not agree for the same.

16. The petitioner also relied upon the judgment rendered by the Division Bench of this Hon'ble Court in the case of ***Panati Madhusudhana Reddy Vs. Maddali Renuka @ Suhasini***¹ wherein it was held that parties living separately for the past 10 years and their matrimonial bond, beyond salvage, and granting her a decree of divorce, would enable her to lead a marital life with another.

17. In the instant case, admittedly, the parties have been living separately since 12.06.2011 i.e. more than 12 years and there is no chance of their re-union. Failure to untie the marital knot, and setting aside judgment and decree of the trial Court in dismissing the petition of the petitioner for dissolution of her marriage with the respondent, would only compound the misery which the wife had undergone during their stay under one roof.

18. In view of the foregoing reasons, the appeal filed by the petitioner/wife is deserved to be allowed by granting decree of divorce by dissolving her marriage with the respondent, which was solemnized on 06.05.2007.

¹ 2016(4) ALD 584

19. Accordingly, the Civil Miscellaneous Appeal is allowed by setting aside the order and decree passed by the Senior Civil Judge, Sangareddy, in H.M.O.P. No.6 of 2012, dated 30.03.2015. There shall be no order as to costs.

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

JUSTICE ABHINAND KUMAR SHAVILI

JUSTICE NAMAVARAPU RAJESHWAR RAO

Date:14.02.2024

BDR