

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

*** HON'BLE SRI JUSTICE K. LAKSHMAN**

AND

HON'BLE SMT. JUSTICE P. K.SUJANA

+ I.A.NOs.1 AND 2 OF 2023

IN/AND

FAMILY COURT APPEAL No.103 OF 2016

% Delivered on: 14.11.2023

Between:

A. Asha Latha

.. appellant

Vs.

\$ Abisetti Venkata Rao

.. Respondent

! For Appellant

: Mr. G.Pedda Babu, Lr.Sr.Counsel

^ For Respondent

: Mr. Vishnu Prasad Reddy,
Lr.counsel, representing
Mr.K.Chenchu Rami Reddy
Lr.Counsel.

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> Head Note

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? Cases Referred

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1. AIR 2009 SC 1103
2. AIR 2022 SC 3544
3. AIR 2010 SC 475

HON'BLE SRI JUSTICE K. LAKSHMAN
AND
HON'BLE SMT. JUSTICE K. SUJANA
I.A.NOs.1 AND 2 OF 2023
IN/AND
FAMILY COURT APPEAL No.103 OF 2016

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

Heard Mr. G.Pedda Babu, learned senior counsel for the appellant and Sri Vishnu Prasad Reddy, learned counsel representing Mr. K. Chenchu Rami Reddy, learned counsel for the respondent.

2. Feeling aggrieved and dissatisfied with the order dated 16.06.2016 passed in O.P.No.1241 of 2010 by the Judge, Family Court, Hyderabad, the appellant preferred the present appeal.

Facts of the case:-

3. The respondent/husband had filed a petition vide O.P.No.1241 of 2010 under Section 13 (1) (ib) of Hindu Marriage Act, seeking dissolution of marriage on the ground of desertion against the appellant/wife, before the Family Court, Hyderabad. His marriage with the appellant/wife was solemnized on 17.02.2005 at Brindavan Garden, Guntur as per Hindu rites and customs and the same was registered on 21.02.2005. After marriage, they lived together hardly for one month

and thereafter, left to USA for short period. They blessed with a baby boy by name Master Satwik on 03.08.2007 at Virginia State, USA. Thereafter, disputes arose between them.

4. According to the respondent/husband, the appellant/wife deserted him. Thereafter, he had filed a petition vide O.P.No.57 of 2008 before the Senior Civil Judge's Court, at Medak, on the ground of desertion. The said petition was filed on 05.09.2008. The pre-condition to file application seeking dissolution of marriage on the ground of desertion is that the desertion should have for a continuous period of at least two years prior to the date of presentation of the petition. Therefore, it does not fulfill the said condition of two years. Therefore, the petitioner has withdrawn the said ground. Considering the said facts, learned Family Court in the impugned order in paragraph No.13 held as follows:-

13. However, the evidence indicates that the initial fissures in the relations between the petitioner and the respondent and their respective families only widened further in course of time culminating in the circumstances in which the "Annaprasana" ceremony of their child was performed in Guntur in the first week of February, 2008, when the petitioner and his parents who were invited by the respondent's family for that function felt insulted and the respondent demonstrated extreme unwillingness to go back to her martial home. From then onwards, the petitioner and the respondent have been living separately from each other and the petitioner

filed Op No.57/2008 before the Court of Senior Civil Judge at Medak which was transferred to this Court by the Hon'ble High Court and was renumbered as the present OP. The OP was filed U/sec. 13 (1)(a) and (ib) of the Hindu Marriage Act, 1955 i.e., on the grounds of cruelty and desertion. However, the precondition for enforcing the provisions of Sub-sec.1(ib) of the Act is that the desertion should have been for a continuous period of at least, two years prior to the date of presentation of the petition and as the present petition which was originally filed on 5-9-2008 does not fulfill this condition, the prayer made under this provision of law has been withdrawn and as such has only the ground of cruelty dealt with under sub section (1) (ia) of the Act that has to be taken into consideration.

5. As discussed supra, the aforesaid O.P. was filed seeking dissolution of marriage on the ground of desertion. Thereafter, the respondent/husband had filed I.A.No.619 of 2013 in O.P.No.1241 of 2010 under Order VI Rule 17 of CPC seeking to permit him to amend the provision invoked in the O.P. He wanted to include Section 13(1) (ia) of the Hindu Marriage Act also, which is a ground of cruelty. Vide order dated 03.04.2014, learned Family Court allowed the said application. Feeling aggrieved by the said order, dated 03.04.2014 passed in I.A.No.619 of 2013 in O.P.No.1241 of 2010, the appellant/wife filed CRP No.1249 of 2014, This Court vide order dated 22.09.2014 allowed the said CRP and order under revision dated 03.04.2014 in I.A.No.619 of 2013 in O.P.No.1241 of 2010 was set

aside. Even then, the Family Court erroneously granted decree of divorce on the ground of cruelty.

6. According to the respondent/husband, the appellant/wife committed following acts of cruelty:-

- i. She developed illicit intimacy with her brother-in-law by name Mr. Srinivasa Rao.
- ii. Panchayat was held.
- iii. During panchayat, the appellant/wife reported that she wants to live with P.W.1 provided he agrees to go to USA along with her.
- iv. The relation between her father and father-in-law became strained.
- v. During Annaprasana ceremony, the appellant/wife and her father insulted the respondent/husband and his father.
- vi. She traveled to USA by obtaining student visa suppressing the marriage.

7. It is relevant to note that the Family Court in the impugned order gave a specific finding that the respondent/husband failed to prove the said illegal intimacy developed by the appellant/wife with her brother-in-law Mr. Srinivasa Rao. Therefore, the respondent failed to

prove the said allegation against the appellant herein/wife. Though he claimed that panchayats were held and during panchayats, she reported that she was willing to live with him provided he agreed to go to USA along with her. To prove the said allegation, he failed to examine any elder or person present in the panchayat. He examined himself as P.W.1. He did not file any document to substantiate the said ground of cruelty.

8. In the light of the aforesaid discussion, the issue now to be decided is whether the Family Court is justified in granting divorce to the respondent/husband on the ground of cruelty which was not pleaded and proved more particularly in the light of the order dated 22.09.2014 in CRP No.1249 of 2014.

9. It is relevant to note that hon'ble Apex Court in **Bachhaj Nahar vs. Nilima Mandal**¹, held as follows:-

8. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the court.

¹ AIR 2022 SC 3544

(ii) A Court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.

10. The Apex Court in **Akella Lalitha vs. Konda Hanumantha**

Rao², held as follows:-

16. In the case of Messrs. Trojan & Co. Ltd. v. Rm. N.N. Nagappa Chettiar MANU/SC/0005/1953 : AIR 1953 SC 235, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:

It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.

11. The Apex Court in **Bharat Amratlal Kothari v. Dosukhan**

Samadkhan Sindhi³ held as follows:-

Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignore and keep aside the norms and principles governing grant of relief, grant a relief not even prayed for by the Petitioner.

12. As discussed supra, the respondent/husband had filed the aforesaid O.P. initially on the ground of desertion. However, he has

² AIR 2022 SC 3544

³ AIR 2010 SC 475

withdrawn the said ground. There is no pleading with regard to cruelty. As rightly held by this Court in the order dated 22.09.2014 in CRP No.1249 of 2014 that not a word was said about the cruelty in the pleadings, either in the original form or through the said amendment, thus, trial Court committed error in observing that no prejudice will be caused if the amendment is to be permitted. Thus, the application filed by the respondent/husband vide I.A.No.619 of 2013 seeking to amend the prayer to include ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act was dismissed.

13. The respondent/husband filed I.A.No.1 of 2023 seeking to carry out certain amendments which are as follows:-

“1. The cause title to be amended to include Section 13(1)(ib) along with Section 13(1)(ia) of the Act.

The following below line shall be added after paragraph 1 of the plaint:-

2. The deliberate act of keeping the petitioner away from physical relationship since 2008 which is an admitted fact without any rhyme or reason amounts to cruelty.

The prayer shall be amended as:-

To dissolve the marriage between petitioner and Respondent solemnized on 17.02.2005 on the grounds of cruelty and desertion amounting to cruelty.”

14. He has also filed I.A.No.2 of 2023 seeking permission to receive additional document i.e. duly sworn affidavit dated 06.01.2023 of the appellant/wife filed in CRP No.7381 of 2018.

15. As discussed supra, the respondent/husband herein had filed I.A.No.619 of 2013 in O.P.No.1241 of 2010 to amend the prayer to include ground of cruelty. The same was allowed. Feeling aggrieved by the same, wife had filed CRP No.1249 of 2014 and this Court vide order dated 22.09.2014 allowed the said CRP and set aside the order in I.A.No.619 of 2013 passed by the learned Family Court.

16. In the light of the same, the respondent/husband is not entitled to amend the prayer at the stage of appeal. Therefore, I.A.No.1 of 2023 is dismissed. Consequently, I.A.No.2 of 2023 seeking to receive additional document is also liable to be dismissed.

17. The appellant and respondent blessed with a baby boy by name Master Satwik on 03.08.2007. At present he is now at 16 years. He had filed M.C.No.25 of 2011 seeking maintenance.

18. Vide order dated 14.07.2016, this Court suspended the impugned decree and order. This Court also initiated mediation proceedings on the ground that there is an element of settlement. The said mediation proceedings were unsuccessful.

19. In the light of the aforesaid discussion, the Court below erred in granting divorce to the respondent/husband by dissolving the marriage of the appellant/wife with him solemnized on 17.02.2005 on the ground of cruelty. As discussed supra, the Family Court cannot grant decree of divorce without there being a pleading and cogent evidence. The Court cannot grant divorce on the ground of cruelty without pleading and proving the same. Therefore, the impugned order and decree is hereby liable to be set aside.

20. In the result, I.A.Nos.1 and 2 of 2023 are dismissed. The appeal is allowed. The impugned order dated 16.06.2016 passed in O.P.No.1241 of 2010 by the Judge, Family Court, Hyderabad, is set aside.

Consequently, miscellaneous petitions if any pending in this appeal shall stand closed.

JUSTICE K. LAKSHMAN

JUSTICE K. SUJANA

Date:14 .11.2023.

**Note: L.R.copy to be marked.
b/o. vvr.**