(2013) 07 AP CK 0034

Andhra Pradesh High Court

Case No: C.M.A. No''s. 3437 of 2000 and 295 of 2001

Bodapati Umamaheswari		APPELLANT
	Vs	
Bodapati Venkateswara Rao		RESPONDENT

Date of Decision: July 29, 2013

Citation: (2014) 1 ALD 28 : (2013) 6 ALT 405

Hon'ble Judges: S.V. Bhatt, J; L. Narasimha Reddy, J

Bench: Division Bench

Advocate: B. Adinarayana Rao, for the Appellant; P. Raja Gopal Rao, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.

These two appeals are between the same parties and arise out of a common order passed by the Court of I Senior Civil Judge, Kakinada, in O.P. Nos. 36 and 82 of 1996. Hence, they are disposed of through a common judgment. Marriage between the appellant and the respondent took place at Kakinada, way back on 18.06.1987. The respondent filed O.P. No. 36 of 1996 u/s 13(1)(ia)(ib) of the Hindu Marriage Act (for short ''the Act''), for divorce, against the appellant, alleging grounds of cruelty and desertion. He pleaded that after their marriage was performed, the appellant went to her parents'' house and lived there for one month and though she came back, on repeated requests, she stayed only for 20 days and went again. The appellant is said to have informed the respondent that she is not interested to live with him and that she would join him, if he puts up a separate residence. The respondent alleged that though he has set up a separate residence, the appellant did not join him, and on the other hand, filed C.C. No. 44 of 1993 u/s 498-A of I.P.C. in the Court of IV Additional Judicial First Class Magistrate, Kakinada, with false allegations, including the one, touching his character. He further stated that he filed O.P. No. 50 of 1990 for judicial separation and when the appellant came forward to live with him, he withdrew the O.P. It was alleged that C.C. No. 44 of 1993 ended in acquittal and the appellant had carried the matter in revision to the High Court and there also it was

dismissed. According to the respondent, these and other related facts constitute the grounds of cruelty and desertion.

2. The appellant filed a detailed counter, opposing the O.P. She pleaded that the marriage was performed just before the month of ''Ashada'' and as per the customs, she had to live in the house of her parents for that entire month and even that was treated as an act of desertion. She stated that the respondent harassed her by demanding additional dowry from her father, who retired as a Superintendent in Central Excise. It was also pleaded that the O.P. filed by the respondent for judicial separation was withdrawn, once she has informed the Court that she was always willing to live with the respondent. She pleaded that C.C. No. 44 of 1993 ended in acquittal by giving benefit of doubt and even this Court in the revision, took the view that it is more a case of feeling of discomfort by her in the company of the respondent and his mother, and no finding was given in the proceedings that the complaint was baseless. She alleged that on being insisted, she brought Rs. 5,000/-, each, on three occasions from her parents house, and that the respondent harassed for transfer of her fixed deposits in his name. Demand is also said to have been made for purchase of a Yamaha Motor Cycle and payment of some amount for discharge of debts.

3. Almost, at the same time, the appellant filed O.P. No. 82 of 1996 u/s 9 of the Act, against the respondent, for restitution of conjugal rights. For all practical purposes, the pleadings in O.P. No. 36 of 1996 were repeated by the respective parties.

4. Through its common order, dated 25.10.2000, the trial Court decreed O.P. No. 36 of 1996 and dismissed O.P. No. 82 of 1996. Hence, these two appeals.

5. Learned counsel for the appellant submits that the trial Court recorded a finding to the effect that the ground of desertion pleaded by the respondent was not proved and that no appeal has been filed by the respondent against the said finding. He contends that the facts pleaded by the respondent, as constituting cruelty, are interrelated with the plea of desertion and once the version of the respondent was found to be unbelievable, hardly there was any basis for granting the relief to him. He submits that the trial Court has treated the acquittal of the respondent in C.C. No. 44 of 1993 and the proceedings before the criminal Court as constituting cruelty and the same cannot be sustained in law. He further submits that not a single independent witness was examined to prove the ground of cruelty, whereas six witnesses were examined on behalf of the appellant. He contends that the very fact that the father of the respondent deposed as a witness in the criminal case supporting the appellant, is sufficient to demonstrate the falsity of the facts pleaded by him.

6. Learned counsel for the respondent, submits that the grounds of the desertion, on the one hand, and cruelty, on the other, stand on different footing and a finding recorded on one, cannot have any impact upon the other. He contends that the

harassing tendency on the part of the appellant is evident from the fact that not only she filed a criminal case, but also has carried the matter in revision, when the trial Court acquitted the respondent. He submits that on account of the harassment caused by the appellant in the course of investigation, the respondent suffered a lot and faced serious problems with his employer. He contends that the trial Court has analyzed the matter from the correct perspective, applied the relevant precedents, and that the decree of divorce passed by it, does not warrant any interference.

On the basis of the pleadings before it, the trial Court framed the following points:

In O.P. No. 36 of 1996

i) Whether the respondent/wife treated the petitioner/husband with cruelty?

ii) Whether the respondent/wife voluntarily deserted the petitioner/husband and has been staying away from him for more than two years immediately preceding to the filing of the petition without any just and reasonable cause?

iii) Whether petitioner/husband is entitled for divorce on the grounds of cruelty and voluntary desertion?

iv) To what relief?

In O.P. No. 82 of 1996

i) Whether the wife is entitled for restitution of conjugal rights as prayed for?

ii) To what relief?

7. The oral evidence on behalf of the respondent is just his own deposition and he filed Exs. A.1 to A.8. On behalf of the appellant, RWs. 1 to 6 were examined and she filed Exs. B.1 to B.24. The trial Court decreed O.P. No. 36 of 1996 and dismissed O.P. No. 82 of 1996, as observed earlier.

8. It has already been mentioned that though the respondent pleaded two grounds in O.P. No. 36 of 1996, the trial Court held that the plea as to desertion was not proved. The decree was passed only on the ground of cruelty. O.P. No. 82 of 1996 was filed u/s 9 of the Act and the result in that O.P., would invariably depend upon the outcome of the other O.P. No separate adjudication needs to be undertaken in it.

9. The points that arise for consideration in these appeals are as to,

a) Whether the respondent proved the plea of cruelty, on the part of the appellant?

b) Whether the trial Court has applied the correct principles to the facts of the case?

10. Before proceeding with the discussion on merits, it needs to be stated that the judicial system, as such, owes an apology to the parties herein. The trial Court took four years to dispose of the O.Ps. This is as against the requirement under the Act

that the proceedings instituted under it, must be disposed of to the extent possible, within six months from the date of institution. The appeals were presented by the aggrieved woman, way back in the year 2000. 12 years thereafter, they were dismissed for default straight away on 13.03.2012. Another bench restored the appeal to file on 08.06.2012 and it took full 13 years for disposal of the appeals. The amount of inconvenience, mental agony, which the parties have undergone over the period, is not difficult to assess. It hardly needs any mention that when Courts exhibit utmost urgency, when a bootlegger or a smuggler is detained and the writ of Habeas Corpus is disposed of hardly, in one or two months, may be with proper justification, a fraction of that urgency, if exhibited towards matrimonial matters; would certainly help in ensuring harmony and orderliness in the society.

11. Since the relief of divorce would put an end to the solemn bond between the parties, that too in the teeth of opposition by the other, the Court must be fully satisfied as to the existence of grounds before it passes a decree of that nature.

12. Whenever a spouse to a marriage pleads the ground of cruelty, as the basis for divorce, heavy burden rests upon him or her to prove it. The act of cruelty need not be in relation to any particular incident, nor it need to be established that the spouse complaining of it has sustained any bodily injuries. A prolonged and consistent conduct on the part of one spouse, resulting in mental agony, unrest and harassment, to the other, if proved would certainly constitute a ground for cruelty.

13. The respondent pleaded the grounds of desertion as well as cruelty. Though these grounds may appear to be independent, they are intertwined in many cases. One would have its own shadow or impact on the other. In attempting to make out a case of desertion on the part of the appellant, the respondent pleaded that the appellant did not evince any interest to live with him and within 20 days of the marriage, she left for the house of her parents and lived there for 30 days. It was alleged that though she joined him later on, she left the house once again. He further stated that the appellant instituted proceedings u/s 498-A I.P.C., and other relevant provisions against him. On his part, he filed O.P. No. 44 of 1993 for judicial separation. The acquittal in the criminal case was presented as an important ground for establishing cruelty.

14. The plea of the appellant, however, was that she had to live in the house of her parents in the month of Ashada, in the first year of marriage, and that was painted by the respondent as an act of desertion. She further alleged that after she joined him in the next month, the respondent started harassing her demanding additional dowry etc. She has also furnished the instances of her bringing amounts on various occasions from her parents'' house and satisfying the demands of the respondent.

15. On a detailed consideration, point by point, the trial Court held that the respondent failed to prove the plea of desertion. Though that finding by itself does not have any direct impact upon the other plea as to cruelty, it cannot be treated as

totally irrelevant. Firstly, the trustworthiness, in fact the lack of it, of the plea of the respondent about the statements, made in the petition and deposition, becomes clear. Secondly, once the allegation as to the desertion was found to be wrong, and the plea put-forward by the appellant in that behalf was accepted, certain events pleaded by her in the same sequence, get the corresponding acceptability. It is in this background that the points framed by us need to be examined.

16. The respondent did not allege that either the appellant or her parents have physically harassed him at any point of time. The gravamen of his contention was that a complaint u/s 498-A of I.P.C. was submitted with false allegations and the same resulted in cruelty towards him, particularly after acquittal therein. He sought to add strength to his contention, by further pleading that the appellant exhibited her perseverance by filing a revision against the acquittal. The trial court was impressed by this and extensive discussion was undertaken about it. In the process, it has assumed several facts to itself, though not pleaded by the respondent.

17. For example, the record in Crime No. 190 of 1990 discloses that, the Sub-Inspector of II Town, Law and Order Police Station, Kakinada, addressed a letter marked as Ex. B.6 to the Zonal Manager, Central Bank of India, Hyderabad, in which the respondent was working, stating that a case u/s 498-A I.P.C., has been registered. Obviously, when verified by the superiors, the respondent presented his version, through a letter marked as Ex. B.7, stating that only crime was registered and he was not arrested etc. Dealing with this aspect, the trial Court observed:

So, it is evident that even without arrest of the husband and even without getting him remanded, police appeared to have informed the superior authorities of the husband for taking action. In view of the same, it is quite probable to say that the police would not have acted so promptly and would not have informed the superior authorities of the bank unless the father of the wife who was working as Superintendent, Central Excise, Kakinada, at that time had intervened in the matter. In view of the same, it is evident that the wife had not only given complaints to the police against her husband who is a bank employee but also made him to go round the police station and also got the same informed to the superior authorities of the bank for taking necessary action. This makes the intention of the wife so clear that she wanted to see that it affects the job of her husband so that he suffers.

18. For all practical purposes, the learned trial Judge has prompted his mind to cross the boundaries of the case and purport of evidence. As a result, findings, which are contrary to the principles of evidence, were recorded.

19. Mere filing of a case u/s 498-A of I.P.C., or for that matter, availing of further remedies in that direction, by itself cannot be treated as a ground of cruelty. It is no doubt true that in certain cases, the Hon''ble Supreme Court and High Courts, took note of the filing of criminal cases with false allegations by one spouse against the other and treated it as an act of cruelty. Those, however, are the cases, in which,

''malice'' was found to be existing, even before the proceedings were instituted and the criminal proceedings were treated as the devices, to take the malice further.

20. For instance, in Vishwanath Agrawal Vs. Sau. Sarla Vishwanath Agrawal, the wife and her parents have gone to the extent of publishing a notice in a local newspaper, alleging that the husband is a womanizer and was addicted to liquor. Shortly thereafter, the wife came to the husband and abused him, his father, and other family members. She was found to have created a violent atmosphere in the house as well as office of the husband and causing damage to the property. The husband and his family members had to file a complaint. It is in this context, that institution of proceedings u/s 498-A of IPC by the wife was treated as an act of cruelty. The registration of a case cannot be viewed in isolation. Otherwise, even where a wife files a genuine complaint u/s 498-A IPC, it would immediately provide a fertile ground for the husband to seek divorce by pleading the ground of cruelty, only on that basis. Such an approach would shake the very foundation of Section 13 of the Hindu Marriage Act and Section 498-A of IPC.

21. In the instant case, the situation is the other way. Almost contemporaneously with C.C. No. 44 of 1993, the respondent filed O.P. No. 50 of 1990 for judicial separation. It is with the initiative of the appellant and on her filing an undertaking that she is willing to live with the respondent, that the latter has withdrawn that O.P. At no point of time, the respondent has made any complaint against the appellant alleging that she left him without justification, much less, did he file any petition u/s 9 of the Act. On the other hand, it is the appellant, who filed O.P. No. 82 of 1996 u/s 9 of the Act. That itself discloses that she was always interested to live with him.

22. For proving the acts of cruelty, sole testimony of the complaining spouse would not be adequate. In case, the acts of cruelty on the part of the other spouse have been witnessed by any other persons such as inmates of the family, neighbours, the evidence of such persons has to be adduced. If there are no eyewitnesses to the occurrences, persons with whom with the concerned spouse has shared his experiences and who have an occasion to observe the relationship between the parties, can be cited as witnesses. This category of witnesses, may include the friends and family members. Except that the respondent repeated the contents of his petition as P.W. 1, he did not examine any other witness. That itself shows that he has not proved the facts pleaded by him.

23. Normally, in the matrimonial matters, the parents of the concerned spouse would depose in favour of their son or daughter as the case may be. The Courts would be loath to accept the evidence of such people. However, if that happens, to be the best evidence or the only available, is no reason to discard it on the sole basis of proximity or relationship. The case on hand presents, a typical instance of the father-in-law of a woman supporting her case in the proceedings between her and her husband. In C.C. No. 44 of 1993, the father of the respondent herein i.e., father-in-law of the appellant, deposed on behalf of the prosecution. Obviously,

because of that, the respondent did not cite his father as a witness. Even if he had any reservation about the independent version of his father, he could have examined the other family members or the friends or the neighbours. His failure to examine anyone of them, would certainly fell upon the weakness of his case.

24. On her part, the appellant examined as many as six witnesses including herself. Everyone spoke consistently that she has been subjected to cruelty by the respondent. Hence, we came to conclusion that the respondent failed to prove the acts of cruelty on the part of the appellant.

25. Though the second point is framed separately, most part of it has been dealt with in the discussion relating to the first point. We are of the view that the trial Court has deviated from the settled principles, as regards placing of burden of proof, and in recording finding on the plea of cruelty.

26. One of the grounds urged by the learned counsel for the appellant is that since the parties are living separately for past more than one and half decade, there is no point in continuing the marriage. We are unable to subscribe to the view expressed by him. If living separately alone for a prolonged period can constitute the basis to pass a decree of divorce, a dominant spouse which in the Indian context is mostly the husband, can simply create circumstances for the other spouse to live separately, and then cite that very ground as the basis for dissolution of the marriage. That was never the intention of the Parliament, which made an attempt to regulate the institution of the marriage through the Act. The emphasis was to restrict the instances of divorce, than to encourage them indiscriminately. What was treated as an exception cannot be ascribed as a role of the rule.

27. The appeals are allowed. As a result, the O.P. No. 36 of 1996 shall stand dismissed and O.P. No. 82 of 1996 is allowed. There shall be no order as to costs. The miscellaneous petitions, filed in these appeals shall sand disposed of.