

**(2010) 03 AP CK 0014**

**Andhra Pradesh High Court**

**Case No:** Civil Miscellaneous Appeal No. 385 of 2002

Smt. K. Padmaja

APPELLANT

Vs

K. Venugopal Reddy

RESPONDENT

**Date of Decision:** March 30, 2010

**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13(1)

**Citation:** (2010) 5 ALT 731

**Hon'ble Judges:** V. Eswaraiah, J; B.N. Rao Nalla, J

**Bench:** Division Bench

**Advocate:** M.V. Durga Prasad, for the Appellant; None appeared, for the Respondent

**Final Decision:** Allowed

### **Judgement**

V. Eswaraiah, J.

The appellant is the wife of the respondent. The respondent filed O.P. No. 746 of 1998 on the file of the Family Court, Hyderabad, u/s 13(1)(ia) and (ib) of Hindu Marriage Act, seeking a decree of divorce on the grounds of cruelty and desertion.

1. The said OP was allowed by order dated 28/11/2001, and aggrieved by the same the wife/the respondent in the said OP filed this appeal. This Court, while admitting the appeal, granted interim stay of operation of the said order, and thereafter, the notice by substituted service was ordered and after service of the notice, certain interim directions were also issued, as the respondent did not choose to appear and contest the said application. Though this case has been taken up for hearing on several occasions, none appeared for the respondent.

Heard the learned Counsel appearing for the appellant.

The parties herein are referred to as they are arrayed in the OP. The husband who is the petitioner in the OP is hereinafter called as the petitioner and the appellant herein who is the respondent in the said OP is hereinafter called as respondent.

2. It is the case of the petitioner that his marriage took place with the respondent on 08/08/1993 at TTD Kalyana Mandapam, Gudiwada of Krishna District as per Hindu rights and customs and their marriage was consummated. Immediately after the marriage, the respondent joined his company at Lingamguntla Agraharam, Narsaraopet Mandal, Guntur District, and both of them lived together till they shifted to Hyderabad on 18/06/1994 and started their marital life at Hyderabad. Out of their wedlock, one son was born on 02/01/1995 at the parents" house of the respondent at Bethavolu, Gudiwada Mandal, Krishna District. Both of them lived at Hyderabad from 18/06/1994 to 12/08/1994 and thereafter, the respondent left the company of the petitioner, without informing him, and after making searches for some days, he came to know that she was with her parents. His mother went to bring her on 10/12/1994 and again his parents went to the respondent on 02/01/1995 when the child was born, but she refused to return to the society of the petitioner and she also refused to live with his parents. The petitioner himself went to the parents of the respondent on 17/01/1995 but she bluntly refused to accompany him. Again he sent his mother and others on 10/02/1995, 26/05/1995, 02/06/1995, but there was no response from her. He himself again went to get her to his society on 05/06/1995 but she again refused. She not only refused but assaulted and abused him in filthy language and threatened him with dire consequences if he comes again to take her to his society. As such, he has sent his cousin Nagireddy/P.W.3 and his friend Ramana Reddy on 15/02/1996, but the respondent failed to respond to the requests of the aforesaid persons and he again went along with Nagireddy to the respondent on 23/03/1996 to persuade her, but she bluntly refused to come and join his society. Lastly, he along with his parents and his cousin Nagireddy/P.W.3 and Ramana Reddy went to the parents" house of the respondent and requested her to join the society of the petitioner, but she refused and abused the persons who persuaded her and threatened with dire consequences. It is stated that in spite of repeated requests and attempts made by the petitioner, the respondent never responded to his requests and the mediators". As such, he is living separately from 27/06/1997. It is stated that the respondent's parents are rich compared to the family of the petitioner and she is having the habit of luxurious life and could not accustom with the limited income and expenditure. It is stated that she was having friendships with highly placed people and also living in the midst of rich circle at Bethavolu, Gudiwada Mandal, Krishna District. It is stated that as the respondent lived with him only for 56 days i.e., from 18/06/1994 to 12/08/1994, the day on which she left the company of the petitioner, while they were living in Hyderabad, the birth of his child on 02/01/1995 clearly shows and creates a shadow on the birth of the child. Therefore, the petitioner believed that the respondent is not interested to live in his society and also dislikes to lead a respectable family life with the petitioner and the attitude of the respondent disclosed that she is not interested to live in his society for no fault of him, making him to suffer his family life.

3. A counter has been filed denying all the allegations made in the OP while admitting their marriage on 08/08/1993 at Gudiwada of Krishna District and also about the consummation of the marriage and the birth of the son on 02/01/1995 and joining the petitioner at his residence Lingamguntla Agraharam immediately after marriage on 08/08/1993 till they left for Hyderabad on 18/06/1994. Thus, it is not in dispute that both of them lived in the house of the petitioner's parents immediately from the marriage i.e., from 08/08/1993 till they left to Hyderabad on 18/06/1994 i.e., for about ten months and thereafter lived together for a period about two months in Hyderabad. But she denies the allegation that she herself left the company of the petitioner on 12/08/1994 and it is stated that he himself driven her out from his home on 12/08/1994 demanding more money and other articles from her parents and therefore, she had no other alternative but to go her parents house as she did not know anybody in Hyderabad. All other allegations that his mother, himself and others came to her parents house to take her for the conjugal society of the petitioner were denied. It is stated that the petitioner never visited her even when the child was born. It is stated that neither the respondent nor her parents never refused for the request of the petitioner, his parents and the relatives to join her the company of her husband. On the other hand, it is stated that she herself tried through elders to join his company but all the efforts have become in vain. The other allegations that she made an attempt to assault the petitioner and abused him in filthy language and threatened with dire consequences are all denied stating that the said allegations are absolutely false, baseless and are fabricated for the purpose of petition. It is stated that the OP filed by the petitioner is cooked up and created one filed with an oblique motive to obtain divorce so that he can go for second marriage where he can get substantial amount of dowry. The petitioner himself threatened her many times since she was unable to fulfill the demand of the petitioner for more money. The other allegation that she used to have luxurious life in her parents house and therefore she is not prepared to live in the company of the husband is denied and it is stated that the petitioner himself used to live extravagant life. It is stated that she is always interested to join the company of the petitioner for living the rest of the life with the petitioner. It is stated that the petitioner, his parents and relatives are responsible for driving out her from out of her matrimonial life and they are only at fault but not she as she was unable to get more dowry from her parents. It is stated that the petitioner and his parents are only interested in the property given to her by her parents. It is stated that she is interested to live with the petitioner alone and she never deserted the petitioner as alleged but the petitioner himself drove her out of the house. It is stated that having lived with her for 56 days at Hyderabad, he himself drove her out of the house and chosen to make damaging remarks against her about the birth of the child which clearly shows the mean mentality of the petitioner who can stoop down to any level to get the divorce from her.

4. The petitioner was examined as P.W.1 and stated that after the marriage on 08/08/1993 both started living at his house at Lingamguntla Agraaharam, Narsaraopet Mandal, Guntur District, for one year in the said village and thereafter on 18/06/1994 both shifted to Hyderabad and lived together there up to 12/08/1994. She left his parents house without intimating him and he sent his parents on 10/12/1994 to the respondent but she refused to come to him and also abused his parents. On 02/01/1995, the respondent delivered a male child and his parents went there but she refused to show their child and abused his parents. He himself went on 17/01/1995 to see the child but she did not allow him to see the child and she abused him in filthy language. He has narrated the averments made in the OP about the unsuccessful attempts made by himself, his parents and the relatives. But there was no response from the respondent and she herself refused to join even after several attempts. On the other hand, she used to insult him and she was always proud because of her higher status. Both of them are living separately from 12/08/1994. It is stated that the acts on her part clearly shows that she is not interested to join the marital life. In the cross-examination, it is stated that from August, 1993 to June, 1994 he kept his wife with his parents at Lingamguntla Agraaharam of Guntur District and used to go on weekends twice in a month. The dowry, gold and other marriage presents and further demand of one lakh dowry is denied. The suggestion that he himself forced her to terminate the pregnancy and he himself used to harass his wife and also used to threaten her with abusive and filthy language was denied. The suggestion that he himself driven her out of his house on 12/08/1994 was also denied. It is stated that he did not give any complaint for missing of wife and he came to know about the whereabouts of respondent after 4 or 5 weeks. Then when he telephoned to the respondent, he was informed that she went there for delivery in the 5th month of the pregnancy. He went to the respondent on 17/01/1995 after the delivery and saw his son born on 02/01/1995. He admitted that he has not issued any notice to her to join him. The suggestion that he himself wants to get rid of her and treated her with cruelty and ultimately driven her out with a view to obtain divorce on the ground of desertion and he himself is not willing to join her even after the filing of the case is denied.

5. P.W.2, the mother of the petitioner, stated that she was informed by her son about the respondent leaving the company of her son while she was carrying fifth month pregnancy. All efforts made by them to get her back the company of the petitioner were proved futile. It is stated by her that when herself and her husband went to the parents' place of the respondent to get her back, her parents have stated that the petitioner has no income and he cannot maintain the respondent. However, they promised to send the respondent after the delivery. It is stated that their attempt to get her along with the child was of no avail. It is stated that the respondent cannot live with his son as the respondent has no intention to join. The suggestion that she demanded the respondent to bring additional dowry for the business of the petitioner and when the respondent failed to bring the amount

demanded by her, she started harassing, as such she left to her parents house was denied. The suggestions that the respondent was not at fault and she never deserted the petitioner and that the petitioner himself harassed her and the petitioner himself driven out of his house are all denied.

P.W.3 is the cousin of the petitioner, who acted as a mediator, stated that when he went to the respondent along with the parents and friends of the petitioner to the house of the parents of the respondent on 27/06/1997 in Gudiwada, she refused to join the society of the petitioner but she did not give any reasons and they also did not enquire any details as to the fiction between them. He has stated that both the petitioner and the respondent have no intention to live back and therefore, he along with the parents of the petitioner had to come back. The suggestions that the respondent's parents requested him to pacify the situation and that the respondent expressed her readiness to join the society of the petitioner and that the petitioner himself refused to take her and that she was not at all fault are all denied. The suggestion that the child was present when they visited is also denied.

6. The respondent herself examined as R.W.1 and stated that at the time of the marriage her parents handed over a sum of Rs. 1 lakh to her husband towards pasupu-kumkuma besides presentations worth Rs. 1 lakh furniture and other utensils etc., apart from presenting her 35 sovereigns of gold jewellery. It is stated that she was staying at in-laws house from the date of marriage i.e., on 08/08/1993 till January, 1994 i.e., for a period of four months and her husband used to come from Hyderabad frequently by keeping her at her in-laws house. She was taken for Sankranti festival by her parents to Gudiwada and her husband also came for the festival as her parents invited her husband for the festival and there he demanded Rs. 1 lakh from her parents to start a business but her parents could not meet his demand because they have already indebted by performing the marriage. Then he stated that unless they fulfill the demand, he would not take her back from her parents. Therefore, she was in her parents' house till April, 1994 and then her father-in-law came and took her back for Ugadi. She stayed there for one day and as she was suffering with ill-health, she came back to her parent's house for treatment. Thereafter, her husband took a house at Hyderabad and she was taken to Hyderabad. It is stated that while she was in Hyderabad she was carrying third month pregnancy and her husband behaved well for ten days during the presence of his mother and thereafter, he was quarrelling with her for no reason demanding to undergo abortion to terminate pregnancy for which she was not willing and on 10/07/1994 he threatened her to do away with her life or leave his house by the time he returns back from the office in the evening and therefore, there was no other go for herself except to leave his house. After coming to the house, there was again very much quarrel with him and he tried to take away the articles presented by her parents against her will. He used to torture her day by day and make her life miserable which made her to go to her parents' house as she left no option on 12/08/1994 and gave birth to male child on 02/01/1995 at Gudiwada at her parents'

house. Immediately after the delivery, her in-laws were informed over phone but none of them were came to see her or the child. It is stated that none of them attended the barasala function on 17/01/1995 despite they were intimated in advance. When the child attained second year in 1997, the cousin of the petitioner Mr. Nagi Reddy/P.W.3 came to her and suggested mediation for which she has agreed but the petitioner and the mediator have not responded later. Her husband himself totally neglected her without looking after her welfare and the welfare of the child and filed the said OP. It is stated that she has been trying to join his husband since 1995 but his parents were not giving the contact address of her husband. Her parents also tried for reconciliation but they could not even trace her husband as he has vacated the house in August 1994 itself and staying somewhere. During the course of cross-examination, she stated that she is always ready and willing to join her husband. It is stated that even if he sends a word of willingness, she is ready to go and join her husband. It is stated that the OP was filed in Hyderabad with a view to cause inconvenience to her and she has to travel all the time by incurring huge expenditure every month. It is stated that she never deserted the husband and he is not entitled to seek a divorce. In the cross-examination, she has admitted that though her in-laws treated her well from August 1993 to April 1994, but they were making demands to alienate the property that was promised by her father to her. The suggestion that she left her husband in 1994 without intimation was denied. She is carrying 5th month by 12/08/1994. On 10/12/1994, the parents of the petitioner never came to her requesting her to join the petitioner and she never refused their request. The allegation that she never allowed the family members of the petitioner to see the child after delivery was denied. It is stated that she never refused the request of the mediators to join her husband. It is stated that Nagaraja Reddy never came to her requesting to join her husband. Neither Nagaraja Reddy nor her parents-in-law ever visited her requesting her to join her husband. It is stated that her husband himself demanding the additional dowry apart from the dowry given by the time of marriage and she could not know the reason for such demand. It is stated that she did not know why she was asked to go for an abortion. It is stated that her parents also tried to settle the dispute and efforts were made for conciliation. It is stated that she is not in the habit of leading a luxurious life and she is always ready and willing to join her husband and she never deserted her husband and there was no cruelty on her part at any point of time.

7. R.W.2 is the mother of the respondent. She stated that at the time of marriage they presented 35 sovereigns of gold jewellery, Rs. 1 lakh cash and furniture and household articles worth Rs. 1 lakh and they have also promised to give land of Ac. 4 $\frac{1}{2}$  and 200 sq. yards site at Gudiwada. The jewellery, cash and furniture are under custody of the petitioner and his parents which were entrusted by them for the benefit of the respondent. In 1994, her daughter was sent to her by the petitioner to bring Rs. 1 lakh for the petitioner to start a business for which she expressed her

inability. In January, 1994, the petitioner and his parents came to her house for the first festival after marriage for Sankranti on her invitation. But they went away by saying that the respondent can live with her parents till they arrange Rs. 1 lakh. Later, in April, 1994, the father of the petitioner came to her house and took the respondent to his house. Again they sent her back to their house after ten days on the pretext that the respondent was not doing well and she was suffering from ill-health. Later, in June, 1994, the father of the respondent took the respondent again to Hyderabad for setting up their separate family. By that time, she was carrying third month pregnancy. The respondent joined her husband and they lived together but during which period he used to harass the respondent to undergo abortion by terminating the pregnancy and also ill-treated her for her refusal for the abortion. As the respondent was unable to bear with the torture, issued telegrams to her and therefore she along with her son went and enquired why the petitioner is unwilling for the pregnancy, then she was informed that as they are not meeting the said demand of additional dowry of Rs. 1 lakh. Later, on 12/08/1994, the petitioner himself sent away the respondent along with her son. Later, on 02/05/1995, the respondent gave birth to a male child by name Jaideep Reddy. The birth about the male child was informed but they did not come and see the child or the respondent. Later, she made several efforts through the elders to take the respondent for the matrimonial house as the respondent was always ready and willing to join the petitioner for the matrimonial life. Without taking the respondent, the petitioner himself filed an OP for divorce hastily instead of allowing or taking the respondent for the matrimonial life. It is stated that the respondent was not at all at fault but the petitioner himself was at fault and therefore, he is not entitled to seek divorce and the petitioner is bound to take the respondent for marital life. In the cross-examination, R.W.2 stated that when P.W.3 came to her house for sending the respondent to her in-laws place they have agreed for the same and they never refused to send her back to the petitioner for the marital life. It is stated that the mediators simply used to come to take her back but they never took her. It is stated that she also complained about the harassment of the petitioner towards her daughter. It is stated that they never lodged any complaint nor received any legal notice for restitution of conjugal rights. She informed to the elders about the demand made by the petitioner to her daughter for termination of pregnancy. The suggestion that the petitioner never demanded the respondent to terminate the pregnancy was denied. The maternal uncle of the petitioner requested the petitioner to take the respondent into his hold.

8. On the aforesaid pleadings, oral and documentary evidence, the Court below came to a conclusion that the evidence of the petitioner is consistent to his pleadings and established that there is desertion of the petitioner by the respondent which entitles him to seek divorce. While granting divorce, the Family Court granted permanent alimony of Rs. 1,50,000/- to the respondent.

During the pendency of the appeal, the petitioner failed to appear, and therefore, pursuant to the orders for deposit of the said amount, the amount was deposited and the same was also withdrawn by the respondent. It is stated that the interim applications, for deposit of the said amount towards the maintenance amount and to withdraw the same without prejudice to her rights, are not opposed in spite of the service of the notice by substitute service. We are unable to know the reasons for the non-appearance of the petitioner before this Court.

9. The question that arises for consideration as to whether the petitioner was treated with cruelty by his wife/the respondent and whether the respondent deserted the petitioner entitling the petitioner to seek divorce.

In so far as the cruelty is concerned, the petitioner was unable to establish the said ground and the divorce was granted only on the ground of desertion. No doubt, the desertion was not defined in the definitions, but the explanation to Section 13(1) of the Hindu Marriage Act, 1955 reads as follows:

In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

The petitioner alleged that the respondent deserted the petitioner contending that the respondent left the company of the petitioner on 12/08/1994 without intimating him. It is stated that after the respondent left the company of the petitioner on 12/08/1994, he made efforts to search her but after 4 or 5 weeks alone, he came to know that she found at her parents. Admittedly, the petitioner has not filed any complaint about the missing of his wife and he never gave any notice or addressed any letter asking her to join him at any point of time. Had he been interested in her, he would have addressed some letters asking her to join his conjugal life. If really he was serious to lead a marital life, he would have filed an application for restitution of conjugal rights. On the other hand, we are of the opinion that an interested and prudent husband will not keep quiet for four or five weeks after his wife disappeared from the house without intimation. Even during the course of recording the evidence, she expressed her willingness to join the petitioner but the petitioner never took any interest to take her back. But on the other hand, it is the case of the respondent that admittedly, she lived in her matrimonial house at Lingamguntla from the date of marriage i.e., on 08/08/1993 till they left for Hyderabad on 18/06/1994 i.e., for a period of ten months and ten days. Of course, during the first festival, she was taken to her parents' house and her husband was also invited for the first festival where it is stated that he demanded for additional dowry of Rs. 1 lakh. It is not in dispute that she lived for a period of ten months ten days at her in-laws house, during which period, the husband used to come from Hyderabad twice a month and he used to live with her. Immediately after the

marriage, the marriage was consummated and therefore, it cannot be said that she was not conceived through the petitioner. On the other hand, the petitioner made a reckless allegation stating that the incident, which has taken place for her conception, the birth of the child on 02/01/1995 shows and creates a shadow on the birth of the child. We do not see any justification on the part of the husband to make such a reckless allegation doubting the character and conduct of the wife without any basis. However, the said doubt was denied by the respondent stating that she lived with the petitioner for ten months at his parents' house, and thereafter, for two months with him at Hyderabad. It is not in dispute that when she was alleged to have been left, she was carrying 5th month pregnancy. According to the petitioner, the respondent herself left without intimating him. But according to the evidence of R.W.1 coupled with the evidence of R.W.2, she was sent to her parents' house to get additional dowry of Rs. 1 lakh from her parents. It is stated that the petitioner himself used to harass the respondent for additional dowry and also for abortion as they were not fulfilling his demand of additional dowry. Merely because the petitioner has repeated verbatim what has been in the OP, it cannot be said that the said version is trustworthy. It is for the Court to see whether the averments made in the petition and averments made by the petitioner during the oral depositions are motivated, created for the purpose of obtaining divorce on the ground of desertion. We are of the opinion that the averments made in the petition as affirmed in the oral evidence of the petitioner making a serious allegation on the conduct of the respondent with regard to the conception of the pregnancy, which gave raise to a birth of a male child, caused mental cruelty to the respondent/wife herself. He never made any attempt to bring her into his hold. The version of the respondent, that as the parents of the respondent were unable to meet the demand for additional dowry, appears that the petitioner started harassing the respondent to meet his demand of additional dowry. The version of the petitioner that the will of the wife is to lead a luxurious life and that she is an educated lady and that she disliked his company appears to be incorrect as admittedly she stayed with her in-laws in village for ten months, and thereafter, she joined the company of the husband for about 56 days. Therefore, it cannot be said that she herself voluntarily left deserting the petitioner without any reason. Even if she has left while carrying the pregnancy of 5th month on account of the demand made by the petitioner to bring additional dowry and due to the harassment meted out by the husband, it cannot be said that she has deserted the petitioner. Even according to the mother of the petitioner, it is stated that the respondent's parents informed them that they will send her immediately after the delivery. Therefore, we are of the opinion that the Court below, except believing the version of averments made by the petitioner and the parrot like speaking of the deposition by the petitioner, never examined the reasonableness or otherwise of the said averments in the deposition. We are of the opinion that the said evidence available on record is not sufficient to hold that the petitioner was deserted by the respondent, and we accordingly, set aside the finding recorded by the Court below that the respondent deserted the petitioner entitling

him to seek divorce. In so far as the grant of permanent alimony is concerned, it is the duty of the husband to maintain his wife and child, as the petitioner is not entitled to seek any divorce. It is for the petitioner to maintain his wife and the minor child. With regard to the adjustment of the amount of permanent alimony, we are of the opinion that the withdrawal of the said money by the respondent is liable to be adjusted towards the maintenance amount payable by the petitioner to the respondent and the child. For the aforesaid reasons, we are of the opinion that the order of the Court below is unsustainable and accordingly liable to be set aside.

Accordingly, the Civil Miscellaneous Appeal is allowed and the order dated 28/11/2001 in O.P. No. 746 of 1998 on the file of the Family Court, Hyderabad, is set aside. No order as to costs.