



2023/KER/55324

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

MONDAY, THE 18TH DAY OF SEPTEMBER 2023 / 27TH BHADRA, 1945

MAT.APPEAL NO. 578 OF 2015

AGAINST THE JUDGMENT DATED 15.10.2014 IN OP 238/2012 OF

FAMILY COURT, IRINJALAKUDA

APPELLANT/PETITIONER:

SREEDHARAN, AGED 53 YEARS, S/O.VELAYUDHAN,
[REDACTED]

BY ADV SRI.P.NARAYANAN

RESPONDENT/RESPONDENT:

AHSA, AGED 48 YEARS, D/O.KOCHUMON, THAZHATHU
[REDACTED]

BY ADVS.
G.SREEKUMAR (CHELUR)
N.L.BITTO

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
24.08.2023, THE COURT ON 18.09.2023 DELIVERED THE
FOLLOWING:



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A.MUHAMED MUSTAQUE & SOPHY THOMAS, JJ.**Mat. Appeal No.578 of 2015****Dated this the 18th day of September, 2023****J U D G M E N T****A. Muhamed Mustaque, J**

This appeal was preferred by the husband, who was unsuccessful before the Family Court, to obtain divorce on the grounds of cruelty.

2. The marriage between the parties was on 29.01.2002 in accordance with the Hindu religious rites and ceremonies. Two children were born in wedlock. The children are now major. The Appellant-husband was in Muscat and now came down to India and settled. The allegation of cruelty has been narrated in the pleadings. The appellant alleges that the respondent-wife hails from a poor family and was more interested in extracting money from him. It is submitted that the entire money sent by him from Muscat was misused and even the money sent for construction of house was squandered away. The appellant also alleged that the respondent had an illicit relationship with the husband of her sister. The neglect and apathy towards him are one of the cruelty alleged in



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the petition for divorce. The appellant-husband also claimed that differences in the family emerged when a dispute arose between the respondent's family with the widow of respondent's brother namely, Anitha, as the appellant supported the case of Anitha. The respondent denied all the allegations of cruelty raised by the appellant.

3. The constant bickering in marital life, lack of mutual respect, detachment etc. would make the reconciliation impossible. We find nothing in this case which would ensure that the parties to the marriage to stay together. We see, in these types of cases, the parties are trying the court and not the court trying the parties. The appellant has now become a senior citizen. The original petition filed for divorce was filed in the year 2011. Many sunsets have re-dawn but life is yet to reset. Attempts for settlement have been failed. The husband offered Rs.10 lakhs and ten cents of land to the respondent to secure her life. Respondent raised her demand, which the appellant is not willing to accept. As we mentioned earlier, though we tried the parties the parties are not mending their ways for a way out. More than a decade has lapsed through the corridors of the Court. It appears that parties are living under the same roof. The learned counsel for the respondent submits



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that the respondent has no objection in continuing with the appellant and therefore, this case cannot be treated as a fit case where the Court can hold that the marriage has become irrecoverably broken down.

4. We are not referring to the pleadings and evidence to hold the allegation of cruelty. We are sure that mutual consent for divorce failed in this matter as the bargaining could not meet the level of expectation. The court rooms cannot be replaced to allow the parties for a battle for grooming their egos and idiosyncratic behaviour, The Court is established for genuine people who honestly dispute on the cause. If they cannot live together even by sharing residence for more than a decade, it can be presumed that sense is lost on both. The idea of no fault divorce is making the people to realise that there is a sensible way of parting on a mutually agreed terms. Withholding mutual consent in a failed marriage is nothing but cruelty.

5. This Court in *Beena M.S v. Shino G. Babu* [2022 (2) KHC 11] held as follows:

"The law on divorce recognises both fault and consent as a cause for separation. When both the parties are unable to lead a meaningful matrimonial life due to inherent differences of opinion and one party is willing for separation and the other party is withholding consent for mutual separation, that itself would cause mental agony and cruelty to the spouse who demands separation. The purpose of marriage is to hold



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matrimonial ties lifelong, respecting mutual obligations and rights. The companionship of spouses creates oneness of the mind to walk together. It is through mutual respect and courtship, the companionship is built and fortified. The modern jurisprudence of irretrievable break down to allow divorce is premised on the fact that the spouses can never remain together on account of their differences."

6. The Apex Court in *K. Srinivas Rao v. D.A Deepa* (2013) 5 SCC 226 held as follows:

"30. It is also to be noted that the appellant husband and the respondent wife are staying apart from 27-4-1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in *Samar Ghosh* [(2007) 4 SCC 511], if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

32. In *v. Bhagat* [(1994) 1 SCC 337] this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that: (SCC p. 351, para 21)

"21. ... Irretrievable breakdown of the marriage is not a ground by itself. But, while scrutinising the evidence on record to determine whether the ground(s) alleged is/are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind."



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33. In Naveen Kohli [(2006) 4 SCC 558] , where the husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that: (SCC p. 582, para 86)

“86. ... The marriage has been wrecked beyond the hope of salvage [and] public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto.”

It is important to note that in Naveen Kohli case [(2006) 4 SCC 558] this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

34. In the ultimate analysis, we hold that the respondent wife has caused by her conduct mental cruelty to the appellant husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent wife expressed that she wants to go back to the appellant husband, but, that is not possible now. The appellant husband is not willing to take her back. Even if we refuse decree of divorce to the appellant husband, there are hardly any chances of the respondent wife leading a happy life with the appellant husband because a lot of bitterness is created by the conduct of the respondent wife.

35. In Vijaykumar [(2003) 6 SCC 334] , it was submitted that if the decree of divorce is set aside, there may be fresh avenues and scope for reconciliation between parties. This Court observed that judged in the background of all surrounding circumstances, the claim appeared to be too desolate, merely born out of despair rather than based upon any real, concrete or genuine purpose or aim. In the facts of this case we feel the same.

36. While we are of the opinion that decree of divorce must be granted, we are alive to the plight of the respondent wife. The appellant husband is working as an Assistant Registrar in the Andhra Pradesh High Court. He is getting a good salary. The respondent wife fought the litigation for more than 10 years. She appears to be entirely dependent on her parents and on her brother, therefore, her future must be secured by directing the appellant husband to give her permanent alimony. In the facts and circumstance



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of this case, we are of the opinion that the appellant husband should be directed to pay a sum of Rs 15,00,000 (Rupees fifteen lakhs only) to the respondent wife as and by way of permanent alimony."

7. The Apex Court in the concluding paragraph in *Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511* held that long separation and one party refused to serve the matrimonial tie itself would constitute cruelty. The relevant paragraph is extracted herein.

"where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that 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, in such like situation, it may lead to mental cruelty."

8. We, thus, realise that this fight is not for any justifiable cause but to win the egos and to wreak vengeance against other spouse. In recent judgment of the Apex Court in Civil Appeal No.5454 of 2023 (2023 Live Law sc 727), it was held that keeping parties together despite irretrievable break down of marriage amounts to cruelty on both sides.

9. We are, thus, of the view that this appeal has to be allowed and the marriage has to be dissolved. However, we direct the appellant to pay a sum of Rs.10 Lakhs towards permanent alimony and 10 cents of land to



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the respondent. The appellant-husband is directed to produce the sketch earmarking the ten cents of land within a period of one week. The respondent shall signify before this Court regarding her willingness to accept the 10 cents of land offered by her husband within a further period of one week.

This appeal is, accordingly, allowed.

Sd/-

A.MUHAMED MUSTAQUE
JUDGE

Sd/-

SOPHY THOMAS
JUDGE

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