HC-KAR

NC: 2026:KHC-K:10230-DB
MFA No. 200994 of 2023

CNR: KAHC030100012022

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 24TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

AND

THE HON'BLE MR. JUSTICE SUBRAMANYA RANGARAO

MISCL. FIRST APPEAL NO. 200994 OF 2023 (FC)

BETWEEN:

...APPELLANT

(BY SRI. PRAKASH YELI, ADVOCATE)

AND:

Digitally signed by SHIVALEELA D UDAGI
Location: HIGH COURT OF KARNATAKA

...RESPONDENT

(BY SRI S.B. HANGARKI, ADVOCATE)

THIS MFA IS FILED UNDER SEC. 19(1) OF FAMILY COURT ACT, 1984 PRAYING TO SET ASIDE THE JUDGMENT DATED 12.10.2022 PASSED BY THE PRL. JUDGE, FAMILY Court, BIDAR, IN M.C.NO.54/2021 VIDE ANNEXURE-A; II) PASS A

JUDGMENT AND DECREE DISSOLVING THE MARRIAGE SOLEMNIZED BETWEEN THE APPELALNT AND DECREE DISSOLVING THE MARRIAGE SOLEMNIZED BETWEEN THE APPEELANT – AND RESPONDENT- ON 19.05.2019 AT THE TIRUMALA TIRUPATI TEMPLE, ANDHRA PRADESH; ANNEXURE-E2; III) DISMISS THE COUNTER CLAIM FILED BY THE RESPONDENT IN M.C.NO.54/2021, VIDE ANNEXURE-D, AND AWARD EXEMPLARY COSTS AGAINST THE RESPONDENT; IV) GRANT SUCH OTHER AND FURTHER RELIEFS THIS HON'BLE Court DEEMS FIT TO GRANT IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ASHOK S. KINAGI
and
HON'BLE MR. JUSTICE SUBRAMANYA RANGARAO

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE SUBRAMANYA RANGARAO)

"Unsubstantiated claims of mental disorder or absent-mindedness amount to legal cruelty, as they attack a person's core dignity and right to live a dignified, peaceful life with reputation on the touchstone of Article 21 of the Constitution of India, inasmuch as such allegations would leave an unfavourable imprint on the life of a person in a civilized society"

This appeal is filed under Sec.19(1) of the Family Courts Act, 1984, assailing the judgment and order passed in M.C.No.54/2021 dated 12.10.2022 on the file of the Prl. Judge, Family Court, Bidar.

2. The facts apposite are that the Appellant and the Respondent were married on 19.05.2019 at the Tirumala Tirupati Temple, Andhra Pradesh, according to Hindu rites and ceremonies. It is alleged that the Respondent-wife left the matrimonial home in June 2019, and the Appellant issued a legal notice dated 25.03.2020 calling upon the Respondent-wife to return to the matrimonial home and resume marital life. The Appellant-husband thereafter filed M.C.No.54/2021 under Sec.13(1)(ia)(iii) of the Hindu Marriage Act, 1955, seeking grant of divorce. The Respondent-wife filed a counterclaim seeking compensation. The Prl. Judge, Family Court, Bidar dismissed the petition filed by the Appellant-husband, refusing to grant divorce. The Family Court also dismissed the Respondent-wife's counterclaim. The Appellant-husband is, therefore, before this Court in this appeal, challenging the judgment and order passed by the Family Court.

3. The Appellant-husband examined himself as PW.1 and also examined Shankar Reddy, an independent witness, as PW.2, and got Exs.P1 to P12 marked. The Respondent-wife has examined herself as RW.1 and marked documents as Exs.R1 and R2 to substantiate her contentions.

4. The Family Court, on appreciation of the respective contentions of the Appellant and the Respondent and also considering the oral and material documents, has proceeded to dismiss the petition filed by the Appellant-husband seeking divorce on the grounds of cruelty and incurable mental disorder. The Family Court also dismissed the counterclaim filed by the Respondent-wife seeking compensation.

5. Sri. Prakash Yeli, the learned counsel for the Appellant-husband, submits that the Appellant has placed all the relevant materials and the records to establish his case that the Respondent-wife is not only absent-minded, but also suffering from mental disorder. It is further submitted that the Family Court failed to appreciate the documents marked in support of his case. The Appellant-husband submits that the Respondent-

wife voluntarily left the matrimonial home and the company of the Appellant-husband without any reason. Since the Respondent-wife left the matrimonial home in 2019, more than two years ago, this amounts to desertion. Thus, the Family Court failed to take this fact into account, and under such circumstances, the appeal filed by the Appellant-husband may be allowed by setting aside the order passed by the Family Court.

6. The learned counsel appearing for the Appellant-husband has placed reliance upon the following decisions of the Hon'ble Supreme Court:

"1. 2006 AIR SCW 1550 (Para 88 to 94)
Naveen Kohli V/s Neelu Kohli

2. 2020 SAR (Civil) 221 (Para 13 to 20 & 22)
Munish Kakkar V/s Nidhi Kakkar

3. SLP (C) No.18000/2022 (DD 21.8.2023) (Para 5)
Rajib Kumar Roy V/s Sushmita Saha

4. MFA No.200200/2022 (DB) (DD 8.2.2024)
(Para 7, 8, 16 & 18)
Tippanna V/s Smt. Bhagyashree

5. 2023 LiveLaw (SC) 353 (Para 13, 14 & 18)
Shri Rakesh Raman V/s Smt. Kavita

6. *SLP(C) No.15793/2014 (DD 6.9.2023) (Para 16 to 19) Smt. Roopa Soni V/s Kamalnarayan Soni*

7. *SLP(C) No.28145/2018 (Para 6 to 9) Nikesh Kumar V/s Suman Devi*

8. *2023 LiveLaw (SC) 375 (Para 33 & 42(iii)) Shilpa Sailesh V/s Varun Sreenivasan"*

By referring to the aforementioned decisions, learned counsel for the Appellant-husband would contend that, when the marriage between the parties has broken down irretrievably, it is a ground for grant of divorce.

7. The learned counsel for the Respondent-wife has made submissions, supporting the order passed by the Family Court. The learned counsel prays to dismiss the appeal, without interfering with the judgment and order passed by the Family Court.

8. Having heard the learned counsel for the Appellant-husband and the learned counsel for the Respondent-wife, and considering the oral and documentary evidence, the following point arises for consideration:

i. Whether the Appellant-husband has established that the judgment and order passed by the Family Court call for interference?

The aforementioned point is answered in the ***negative*** for the following reasons:

REASONS

9. The marriage of the Appellant-husband and the Respondent-wife was solemnised on 19.05.2019 at Tirumala Tirupati Temple as per Hindu traditions, and they resided together for nearly four weeks. The Appellant-husband alleged that the Respondent-wife did not do any household work and was always sitting aloof. It is the allegation of the Appellant-husband that the Respondent-wife has been suffering from a mental disorder and he took her for treatment to a Doctor in Kalaburagi and later on to Fortis Hospital, Bengaluru and NIMHANS, Bengaluru. The Appellant has also alleged that the Respondent-wife and her parents left the hospital without intimating the Appellant-husband. The Appellant, as there was no reconciliation, had filed a petition under Sec.13(1)(ia)(iii) of

the Hindu Marriage Act, 1955, seeking divorce on the ground of cruelty and mental disorder.

10. The Respondent-wife filed objections admitting the marriage between the Appellant and herself. The Respondent-wife had denied all other allegations made against her in the petition and further stated that her parents had spent Rs.6,00,000/- during the engagement ceremony and had given 20 tolas of gold ornaments and other articles amounting to Rs.5,00,000/-. The Respondent-wife specifically pleaded that the Appellant is 15 years older than her and was not performing conjugal rights from the date of marriage. After the Respondent-wife left the matrimonial home, the Appellant-husband never turned back or made any attempt to bring her back to the matrimonial house. The Respondent–wife has therefore filed a counterclaim seeking compensation.

11. The Family Court has framed the following issues:

1) Whether the petitioner proves that, he has made grounds of cruelty and incurable mental disorder for allowing the petitioner?

2) Whether the respondent proves that, she is entitled for compensation?

3) What order or decree?

12. The Family Court, upon considering the oral evidence of PWs. 1 and 2 and Exs. P1 to P12, and similarly the oral evidence of RW. 1 and Exs. R1 and R2, rejected the petition, holding that no case is made out for allowing the petition and granting a decree of divorce.

13. The marriage between the Appellant and the Respondent was solemnised on 19.05.2019, and the records reveal that the Respondent left the matrimonial house on 25.06.2019. This demonstrates that the Appellant and Respondent hardly lived together for about four weeks. The allegation of the Appellant is that the Respondent-wife is always absent-minded and has been suffering from a mental disorder. Though the Appellant has got marked Exs.P9 and P10, the hospital receipts, and Ex.P11 and P12, the hospital reports, the same is not corroborated by way of oral evidence, either by examining an expert or the Doctor, to establish the fact that the Respondent-wife was suffering from a mental disorder. Mere

production or marking of documents ***ipso facto*** cannot be construed as allegations being established. In other words, mere marking of documents does not dispense with the burden of proving. Since no expert or the Doctor is examined, the aforementioned documents alone cannot establish the petitioner's case.

14. The case of the Appellant is that the Respondent-wife is absent-minded and is suffering from mental disorder. Nevertheless, when the Appellant PW.1 was cross-examined, it is categorically stated as under:

> "ಮದುವೆಯಾಗಿ ಒಂದು ವಾರದವರೆಗೆ ನಾನು ಮತ್ತು ನನ್ನ ಹೆಂಡತಿ ಖುಷಿಯಾಗಿದ್ದು ನಮ್ಮ ಮಧ್ಯೆ ಯಾವುದೇ ಜಗಳ ಇರಲಿಲ್ಲ ಎಂದರೆ ನಿಜ."

> *"4. There was conciliation talks, once in Basavakalyan the parental house of respondent.* ***The health issue of respondent is that, she is absent minded, that is, if one calls, she does not respond. There is no certificate produced by me from any Psychiatrist, with respect to pre respondents said absent mindedness.*** *I came to know about the respondent's absent mindedness on the first night of marriage. I informed this to the respondent's parents on 29-05-2019.*

> *5.* ***It is true that in the fourth paragraph of the petition, last sentence, I have stated that the respondent was mentally sound. It is true that I have repeated the same also in my chief examination affidavit****. It is false to suggest that I*

> *have created my own story that respondent is suffering from mental disorder."*
>
> ***"Later, the petitioner came to know that such attitude and failure on the part of the respondent was because of the instigation of her mother and relatives and since she was also mentally sound. "***

The Family Court, having considered the above admissions of the Appellant-husband, is justified in rejecting the petition filed by the Appellant for grant of divorce.

15. It is appropriate to note that the Appellant has neither produced any certificate about alleged mental disorder or absent-mindedness of the Respondent-wife. Further, the Appellant-husband has not examined either the treating Doctor or any expert in support of his claim that the Respondent-wife is absent-minded or suffering from mental disorder.

16. It is reiterated that mere production and marking of a document during evidence does not establish its contents. The marking of a document as an exhibit proves only that the document was brought on record. In other words, it does not dispense with the requirement of proving its contents. Receiving the document on record as an exhibit does not

establish its contents until the parties or experts prove them by oral testimony, as required in the case at hand.

17. The other allegation of the Appellant relating to cruelty at the hands of the Respondent–wife is concerned, there is absolutely no material forthcoming. The allegations or averments in the pleading cannot be taken at face value; they must be corroborated by oral and documentary evidence and established in the manner known to law. The burden or onus of establishing his case lies heavily upon the Appellant–husband. Since the Appellant has failed to establish his case, the question of the Respondent-wife proving a negative is unknown to law.

18. The records reveal that the Respondent-wife has left the matrimonial home on 25.06.2019. The fact remains that the Appellant-husband has made no effort to bring the Respondent-wife back to the matrimonial home and to live with the Appellant herein. *It is also admitted that the Appellant has not filed any petition before the Court of law seeking restitution of conjugal rights*. Indeed, in the cross-examination, the Respondent-wife at paragraph-11 has categorically stated as under:

> ***"It is false to suggest that, I have no intention to lead matrimonial life with the petitioner. It is false to suggest that my intention is to have money out of the said relationship. It is false to suggest that, I am deposing falsely."***

The deposition of the Respondent-wife during the cross-examination referred to above would indicate that the Appellant-husband has filed the petition for divorce on the allegations of cruelty and mental disorder, without there being no reason. Indeed, the Family Court at paragraph No.10 observes that in her evidence, affidavit filed in lieu of chief-examination, *the Respondent-wife has prayed for restitution of conjugal rights, but there is no prayer in the counter claim by paying the Court fee*.

19. The Appellant's allegations of cruelty at the hands of the Respondent-wife are untenable. *Firstly, the Appellant has neither pleaded nor proved the allegations of cruelty by oral or documentary evidence*. *Secondly, the Appellant and Respondent hardly lived together for four weeks from the date of marriage and, at any stretch of imagination, that short period of togetherness would rarely give rise to allegations of cruelty by*

the wife. Even otherwise, the allegations made by the Appellant-husband are *unsubstantiated*. In the absence of any material, the Appellant cannot be granted any relief, and the Family Court is fully justified in rejecting the petition filed seeking divorce.

20. The decisions pressed into service by the learned counsel for the Appellant referred to ***supra*** are not helpful to the Appellant. The decisions relied upon by the learned counsel for the Appellant were all rendered by the Hon'ble Supreme Court, and the relief granted therein is exercised under Article 142 of the Constitution of India. The Appellant's contention that there is an *irretrievable breakdown of marriage* also cannot be considered as a ground for grant of divorce, inasmuch as the same is not found as one of the ingredients in the statute book to be a ground for grant of divorce. It is useful to refer to the observation of the Hon'ble Supreme Court in the case of ***Naveen Kohli vs. Neelu Kohli***[1] and the same is as under:

> ***"Before we part with this case, on the consideration of totality of facts, this Court***

[1] 2006 (4) SCC 558

would like to recommend Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. A copy of this judgment is sent to Secretary, Ministry of Law & Justice, Department of Legal Affairs, Government of India for taking appropriate steps."

21. Indeed, Sec.13 and 13(1A) of the Hindu Marriage Act, which deal with divorce, are extracted hereunder:

> *"13.* ***Divorce.-*** *(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—-*
>
> *(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or*
>
> *(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or*
>
> *(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or*
>
> *(ii) has ceased to be a Hindu by conversion to another religion; or*
>
> *(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.*
>
> *Explanation.-In this clause,-—*

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(iv) [***]

(v) has [***] been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

*(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; ****

[Explanation.-—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 wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

[***]

1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the

> ***marriage for a period of [one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]***

The aforementioned provision, more particularly Sec.13(1A)(ii), would imply that the petition seeking divorce or dissolution of marriage shall be based on the ingredients not only contained under Sec.13(1), but also on the ground that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or more or even passing of a decree for restitution of conjugal rights. Admittedly, the Appellant herein had not filed any petition seeking restitution of conjugal rights and therefore the Family Court has committed no error in refusing to grant divorce in a petition filed by the Appellant under Sec.13(1)(ia)(iii) of the Hindu Marriage Act, 1955.

22. In the outline of the foregoing discussions, this Court is of the view that the Appellant-husband has not made out a case for interference with the order passed by the Family Court in refusing to grant a decree of divorce. The appeal is

therefore bereft of merits and does not call for interference with the judgment and order passed by the Family Court.

23. Hence, we proceed to pass the following:

ORDER

The Appeal is hereby ***dismissed***.

Sd/-
(ASHOK S. KINAGI)
JUDGE

Sd/-
(SUBRAMANYA RANGARAO)
JUDGE

SDU
LIST NO.: 1 SL NO.: 19