

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 20TH DAY OF SEPTEMBER 2023 / 29TH BHADRA, 1945

MAT.APPEAL NO. 317 OF 2020

AGAINST THE ORDER AND DECREE IN OP 2047/2017 OF FAMILY COURT,
THRISSUR

APPELLANT/S:

RAMANADHAN @ RAMANATHAN

BY ADVS.
PRABHU K.N.
SHRI.MANUMON A.

RESPONDENT/S:

RAJI

BY ADVS.
ARUN ASHOK
NEENA JAMES
P.P.SANJU

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
17/8/2023, THE COURT ON 20/9/2023 DELIVERED THE FOLLOWING:

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J U D G M E N T

A.Muhamed Mustaque, J.

This appeal was filed by the husband of the respondent, aggrieved by the dismissal of the petition for divorce on the ground of cruelty under Section 13(1)(ia) of Hindu Marriage Act, 1955. The appellant is now 60 years old and submitted that marriage is practically dead and argued that, irretrievable breakdown of marriage and refusal to issue the consent for mutual separation should also be treated as cruelty.

2. The marriage between the appellant and respondent was solemnized on 13/6/1985. Two children born in the wedlock have also attained majority. The appellant worked in a Gulf country and in the year 2015, he returned from Gulf. According to the appellant, as soon as he returned from the Gulf, his wife and children neglected him, and he was not even invited to the wedding of his son. The appellant claimed that the said wedding was hosted on the death anniversary of his mother. He also stated that the respondent left the matrimonial home on 2/4/2017 without any reason.

3. The respondent denied all allegations of cruelty. According to the respondent, their son married a girl of his choice,

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and this had provoked the appellant. It is submitted that minor bickering in the marriage cannot be treated as cruelty.

4. The witnesses examined on the side of the appellant supported the appellant's case. However, the Family Court found that the allegations do not constitute any mental or physical cruelty to grant a decree of divorce.

5. All attempts to reach a settlement have been failed in the matter. Original Petition for divorce was filed in the year 2017. We also requested the parties to think about reconciliation but that did not work out. We note that this marriage cannot be revived. The appellant is living alone and there is no point in retaining marriage.

6. The Apex Court in *Samar Ghosh v. Jaya Ghosh [(2007) 4 SCC 511]* held as follows:

“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.”

In *Beena M.S v. Shino G. Babu [2022 (2) KHC 11]*, this Court 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

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demands separation. The purpose of marriage is to hold 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.”

In a recent judgment of the Apex Court in **Civil Appeal No.5454/2023 (2023 Live Law SC 727)**, it was held that keeping parties together despite irretrievable breakdown of marriage amounts to cruelty on both sides.

In the light of the decisions as above, we are of the opinion that retaining the marriage itself is a cruelty to both the parties and no meaningful purpose would be served. We accordingly dissolve the marriage between the parties and allow this appeal.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SOPHY THOMAS, JUDGE

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