



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF DECEMBER 2023

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE K V ARAVIND

MISCELLANEOUS FIRST APPEAL NO. 6578/2021 (FC)

BETWEEN:

...APPELLANT

(BY SRI H SHANTHIBHUSHAN, ADVOCATE FOR
SRI SUYOG HERELE, ADVOCATE)

AND:

...RESPONDENT

(BY SRI K.SUMAN, SENIOR COUNSEL FOR
SRI SIDDHARTH SUMAN, ADVOCATE C/R)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF FAMILY COURTS ACT PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 19.07.2021 PASSED BY IV ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU IN M.C.NO.2331/2020 ALLOWING THE PETITION FILED UNDER SECTION 13(1)(i-a) OF THE HINDU MARRIAGE ACT, 1955.





THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR FINAL HEARING THIS DAY, **K.S.MUDAGAL.J**, DELIVERED THE FOLLOWING:

JUDGMENT

Challenging the decree of divorce passed against her, the respondent in M.C.No.2331/2020 on the file of IV Additional Principal Judge, Family Court, Bengaluru has preferred this appeal.

2. The appellant was the respondent and the respondent was the petitioner in M.C.No.2331/2020 before the trial Court. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the trial Court.

3. The marriage of the petitioner and the respondent was solemnized on 13.09.2007 at Mayor Ramanathan Chettiar Hall, Chennai. The parties being Hindus are governed by the Hindu Marriage Act, 1955 ('the Act' for short). Out of the said wedlock, the couple were blessed with a daughter on 07.06.2008 and a son on 17.02.2013.

4. The petitioner filed M.C.No.2331/2020 against the respondent on 05.08.2020 seeking decree for divorce on the ground of cruelty. The notice was issued to the



respondent to appear before the Court on 01.10.2020. The order sheet of the trial Court shows that on 27.01.2021 the respondent was placed *ex-parte*. The petitioner was examined as PW.1 and on his behalf, Exs.P1 to P11 were marked.

5. The trial Court on hearing the petitioner by the impugned judgment and decree allowed the petition and granted decree for dissolution of marriage. The said judgment is under challenge in this appeal.

Submissions of Sri H.Shanthibhushan, learned Counsel for the respondent/wife:

6. The trial Court acted contrary to the directions under Standard Operating Procedure ('SOP' for short) issued by the High Court of Karnataka during Covid-19 pandemic. The trial Court took up the matter for hearing and disposed of the same during Covid pandemic period. The dates and events in the case show that the petitioner deliberately hurried the matter during Covid-19 period and surreptitiously obtained the decree for divorce. The trial Court without application of mind allowed the petition simply on the ground that the allegations made by the petitioner in his pleadings



and in his examination in chief were uncontroverted. Section 13(1)(i-a) of the Act places responsibility on the Court to satisfy itself about the grounds of cruelty. The allegations of cruelty or the foundational facts are not proved by leading acceptable evidence. The trial Court passed the judgment and decree mechanically, contrary to the basic principles of appreciation of evidence. An opportunity needs to be given to the respondent/wife to meet the case of the petitioner/husband. Thus the impugned judgment and decree are liable to be set aside and the matter needs to be remanded to the trial Court for fresh disposal.

7. In support of his contentions, he relies on the following judgments:

- (i) **Smt.H.R.Bharathi v. P.Nagabhushan¹**
- (ii) **Smt.N.K.Sudha v. N.T.Krishnappa²**
- (iii) **Smt.Girija v. Sri Aravind³**
- (iv) **Mrs.Shwetha Hande v. Dr.Harish Holla⁴**
- (v) **Smt.Prema.M. v Gururaj⁵**
- (vi) **Smt.Neelavathi v. Mahanthesgouda⁶**

¹ MFA No.10579/2010 DD 01.08.2012

² MFA No.2576/2014 DD 13.11.2019

³ MFA No.201000/2015 DD 23.07.2021

⁴ MFA No.9883/2018 DD 17.10.2019

⁵ MFA No.4564/2019 DD 27.02.2020

⁶ MFA No.100044/2021 DD 04.02.2021



Submissions of Sri K.Suman, learned Senior Counsel appearing for Sri Siddharth Suman, learned Counsel on record for the petitioner/husband:

8. The respondent wife does not dispute service of notice on her. For the reasons best known to her, she did not appear before the trial Court. Even the appeal was belatedly filed. That goes to show that by simply dragging the matter she went on harassing the petitioner. He has taken care of his children born out of marriage of himself and the respondent. He has provided for their education and entertainment also. He also funded the respondent to buy sites and for construction of the house. After decree, the petitioner is married and having two children out of second marriage. The digital communication between the respondent and the petitioner shows that the respondent was also not interested in continuing the marriage. The conduct of the respondent amounts to cruelty as contemplated under Section 13(1)(i-a) of the Act. The trial Court on sound appreciation of the evidence which went uncontraverted, rightly returned the finding that the act of the respondent amounts to cruelty. No purpose would be served by reversing the judgment of the trial Court and remanding the matter. Hence, he seeks for dismissal of the appeal.



9. In support of his contentions, he relies on the following judgments:

- (i) **Rakesh Raman v. Smt.Kavita**⁷
- (ii) **Samar Ghosh v Jaya Ghosh**⁸

10. On careful consideration of the submissions of both side and on examination of the materials on record, the point that arises for determination of the Court is "whether the impugned judgment and decree for dissolution of marriage is sustainable?"

Analysis

11. The parties are not in dispute regarding their marriage on 13.09.2007 and they begetting two children on 07.06.2008 and 17.02.2013. It is also not disputed that both of them are living separately since 2020. The petition for divorce was filed on 05.08.2020 i.e. during Covid-19 pandemic period. It is also not disputed that during the pendency of the proceedings before the trial Court, Standard Operating Procedure (for short 'SOP') issued by the High Court of Karnataka regarding conducting of the cases was in force.

⁷ AIR 2023 SC 2144

⁸ (2007) 4 SCC 511



12. Some dates and events which are relevant in the matter are as follows:

Sl. No.	Date	Order
1.	05.08.2020	Filing of the petition
2.	11.08.2020	The Court issued notice to the respondent wife for appearance before the Court on 01.10.2020.
3.	01.10.2020	The trial Court citing SOP of the High Court of Karnataka dated 27.08.2020 adjourned the matter to 21.11.2020
4.	07.10.2020	The petitioner got the matter preponed. The matter was taken on board. Adjourned to 21.11.2020
5.	21.11.2020	Adjourned the matter to 27.01.2021 as the Presiding Officer was on leave.
6.	24.11.2020	Petitioner replied through mail on 24.11.2020 at 12.36 p.m.
7.	09.12.2020	Petitioner replied through mail on 09.12.2020 at 05.08 p.m.
8.	14.12.2020	The trial Court recorded the petitioner's Counsel's submission that already the respondent is served with notice on 01.10.2020. Adjourned to 27.01.2021 for physical appearance of the parties
9.	27.01.2021	Noting that the respondent was absent, she was placed <i>ex-parte</i> . Adjourned for petitioner's evidence to 15.03.2021
10.	15.03.2021	The petitioner files affidavit in lieu of examination in chief and examined as PW.1. Adjourned to 01.04.2021 for further examination of PW.1.
11.	01.04.2021	The petitioner was further examined. For further chief of PW.1, adjourned to 07.04.2021.



12.	07.04.2021	PW.1 was further examined. Adjourned to 17.06.2021 for arguments.
13.	17.06.2021	The petitioner produces some more documents. Posted to 24.06.2021.
14.	23.06.2021	The petitioner submits application for production of the documents through drop box.
15.	24.06.2021	The petitioner submits application for production of the documents through drop box. He was further examined through Video Conferencing. Arguments were heard. For judgment adjourned to 09.07.2021.
16.	09.07.2021	Listed for judgment, but not delivered.
17.	14.07.2021	
18.	17.07.2021	
19.	19.07.2021	Judgment delivered. Allowed the petition and granted divorce decree.

13. The above referred dates and events show that the trial Court conducted hearing including recording of the evidence when the world was in the grip of Covid-19 pandemic and when SOP issued by the High Court of Karnataka to regulate the conducting of the cases was in force. No exception could be taken if the urgent cases relating to maintenance or protection orders were taken up. By no stretch of imagination it can be said that taking up the case for divorce decree during pandemic period was an extreme urgency.



14. The next question is whether the trial Court properly appreciated the evidence. The divorce was sought on the ground of cruelty. The trial Court in its judgment states that the following were grounds of alleged cruelty inflicted by the wife:

(i) Due to the divorce of parents of the respondent, she had mood swings. In other words the petitioner says that she had irritability or some mental health condition.

(ii) She did not permit him the physical proximity.

(iii) Though he was interested in having third child, the respondent underwent medical termination of pregnancy and she forced him to undergo vasectomy.

15. As rightly pointed out by Sri H.Shanthibhushan, learned Counsel for the respondent, in view of Section 13(1) of the Act and Order VIII Rule 5 of CPC, the decree for divorce cannot be granted merely because the respondent did not contest the matter. The Court has to satisfy itself that the grounds alleged were proved. Though the petitioner claimed that there was ***divorce between the parents*** of the respondent/wife, which triggered her mental health condition, except his self serving statement, he did not produce any proof of such divorce.



16. Secondly the allegation of mental health condition is very serious. Having regard to the provisions of the Mental Healthcare Act, 2017, the Court shall not accept such condition in the absence of acceptable evidence. The petitioner did not produce any **medical evidence** or medical records to show that the respondent was suffering mood swings or other mental health condition.

17. So far as the allegation of **medical termination of pregnancy**, except producing Ex.P7 which is Xerox copy of discharge summary for Daycare patient purportedly issued by Mallya Hospital, no other evidence was adduced. Ex.P7 does not indicate whose signature on the consent form for medical termination of pregnancy was taken etc. The author of Ex.P7 or the doctor who allegedly conducted such medical termination of pregnancy were not examined to show on what grounds medical termination of pregnancy was carried on. Even as per Ex.P7 the medical termination of pregnancy was on 13.11.2013. Thereafter the petitioner cohabited with the respondent for about 7 years. Whether such act amounts to condonation of alleged cruelty under Section 23 (1) (b) of the Act should also have been considered by the trial Court.



18. The reasoning of the trial Court runs into paras 11 to 15. The judgment in para 11 only says that there are two points raised by the trial Court and they are considered together to avoid repetition. Para 12 speaks of examination of PW.1 and marking of the documents. Para 13 refers to the judgments in **Samar Ghosh's** case referred to *supra* and **Narendra v. K.Meena**⁹. In paras 14 and 15 of the judgment again evidence of PW.1 is reiterated and finally in the last sentence of para 14 and last portion of para 15, the trial Court says that the pleadings and the evidence of PW.1 are uncontroverted, thereby the case of the petitioner is proved. Thus trial Court accepted petitioner's case only on the ground that his evidence is not controverted.

19. Secondly, the trial Court further in para 15 records that the marriage is irretrievably broken down, therefore the petitioner is entitled for decree of divorce. Irretrievable break down of the marriage is not the ground for granting decree for dissolution of marriage under Section 13(1) of the Act. Such power is exercised only by the Hon'ble Supreme Court in exercise of its powers under Article 142 of

⁹ (2016) 9 SCC 455



the Constitution. Trial Court is not vested with such power. The impugned judgment is without application of mind and without appreciation of the evidence or the basic principle of evaluation of evidence. The above facts and circumstances further show that the petitioner took advantage of Covid-19 pandemic period.

20. Relying on some alleged exchange of digital communication, it was argued by learned Senior Counsel that, the respondent herself in those messages has clearly stated that she is not interested in continuation of the marriage, therefore no purpose would be served by reversing the judgment and remanding the matter.

21. First of all the respondent should be given an opportunity of meeting those documents. Secondly, even as per those communications, the respondent was proposing for dissolution of marriage by mutual consent and she was seeking for terms of settlement. The petitioner was asking her to contact his Counsel. That leads to an inference that even during pendency of the case, the petitioner has kept the respondent under the impression that they will go for divorce by mutual consent on settlement of terms. That may



amount to a cause for she not appearing before the Trial Court.

22. Having regard to the aforesaid facts and circumstances, the judgments in ***Samar Ghosh and Rakesh Raman's*** cases referred to *supra* relied by Sri K.Suman, learned Senior Counsel cannot be justifiably applied to the facts and circumstances of the present case. Whereas the judgments relied on by Sri H.Shanthibhushan, learned Counsel for the respondent/wife, clearly held that in such cases, the respondent wife shall be given fair opportunity.

23. Needless to say that the marriage is sacrosanct institution. The couple had 13 years of marital life and two children. In such case, she should not be thrown out of the said institution without being heard. Therefore it is fit case to allow the appeal and remand the matter. Hence the following:

ORDER

The appeal is allowed.

The impugned judgment and decree in M.C.No.2331/2020 dated 19.07.2021 passed by IV Additional Principal Judge, Family Court, Bengaluru is hereby set aside.



The matter is remanded to the trial Court for fresh consideration after giving reasonable opportunity to both the parties.

To avoid further delay, the parties are hereby directed to appear before the trial Court on 08.01.2024 without any further notice.

On such appearance of the parties, the trial Court shall dispose of the matter in accordance with law as expeditiously as possible at any rate within six months from the date of appearance of the parties.

In view of disposal of the appeal, pending IAs, if any, stood disposed of accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**