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NC: 2023:KHC:22132-DB
MFA No. 4378 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JUNE, 2023

PRESENT

THE HON'BLE MR JUSTICE ALOK ARADHE

AND

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS FIRST APPEAL NO. 4378 OF 2017 (FC)

BETWEEN:

SMT KANAKASHREE R

...APPELLANT

(BY SRI. P NATARAJU., ADVOCATE)

AND:

DEVARAJ @ PAPANNA

...RESPONDENT

(BY SRI.S.RUPESH KUMAR, ADVOCATE - ABSENT)

THIS MFA IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 27.03.2017 PASSED IN M.C.NO.353/2015 ON THE FILE OF THE I ADDITIONAL PRINCIPAL FAMILY COURT AT MYSURU, DISMISSING THE PETITION U/S 13(1)(ia) OF THE HINDU MARRIAGE ACT.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, **ANANT RAMANATH HEGDE J.,** DELIVERED THE FOLLOWING:

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by BEERU
RANGADHAMA
NANDINI
Location: HIGH
COURT OF
KARNATAKA



JUDGMENT

The petition is filed under Section 13(1)(1-a) of the Hindu Marriage Act, 1955. The appellant/wife in M.C. No.353/2015 on the file of I Additional Principal Court, Mysuru is before this Court challenging the judgment and decree dated 27.03.2017. In terms of the impugned judgement and decree, the petition filed by the appellant/wife alleging cruelty against the respondent/husband is dismissed.

2. For the sake of convenience, the appellant is referred to as the wife and the respondent as the husband.

3. Brief facts necessary for adjudication of the case can be summarised as under:

The marriage between the parties was solemnised on 08.06.2009 at Mysuru. It is her case that the couple lived together only for two months and even in those two months there was no harmony and there used to be quarrel between the couple. It is stated that despite the best efforts made by the elders, a normal marital relationship did not resume. The wife further alleged that the husband under the influence of alcohol, every day used to abuse her in the presence of others. It is



further submitted that she was not treated with respect and the husband did not have an adjustable nature and both the husband and wife were forced to marry against their wish. It is alleged that the husband used to frequently quarrel for petty reasons. Alleging these facts, the wife filed a petition seeking the dissolution of the marriage.

4. Husband appeared before the Court, however, did not file statement of objections. Thereafter, the wife has led evidence. She has reiterated the averments made in the petition relating to the alleged act of cruelty on the part of the husband and she has stated that it is not possible for her to lead marital life with the husband and as such prayed for dissolution of marriage.

5. The Family Court dismissed the petition. Being aggrieved by the said judgment and decree, this appeal is filed.

6. Learned counsel appearing for the husband submitted that the evidence of the wife relating to cruelty is not contested by the husband and is not challenged, as such the



Family Court is not justified in dismissing the petition seeking dissolution of marriage.

7. It is further submitted that the plea relating to cruelty is very much established. The husband and the wife lived together only for two months after the marriage and in those two months, the relationship between the husband and the wife was not cordial and the husband abused the wife under the influence of alcohol and this fact is established and the evidence led by the petitioner/wife is not challenged by the respondent/husband by cross-examining the wife. The wife in support of her contention has produced 6 documents marked at Exs.P1 to P6. One of the documents, namely Ex.P5 is the SSLC marks card of the wife. It is evident from the said records that she was born on 10.12.1994. When marriage was solemnised on 10.12.1994, the wife was aged 15 years. However, the Family Court has not considered the case of the petitioner/wife under Section 15 of the Hindu Marriage Act as the wife did not press the petition under Section 12 of the Act by way of an amendment. However, it is noticed that in the impugned judgment, the Family Court has not considered the case of the



petitioner/wife, whether the petitioner/wife has made out a case for dissolution of marriage on the ground of cruelty.

8. We have considered the contentions raised at the bar and perused the materials placed on record and the impugned judgment.

9. The effect of not cross-examining the witness is settled in law. The Hon'ble Supreme Court in ***MUDDASANI VENKATA NARSAIAH(D) THROUGH LRS. VS. MUDDASANI SAROJANA', (2016) 12 SCC 288*** has held that the cross-examination is a matter of substance and not of procedure and the effect of non-cross-examination of a witness is that the statement of the witness has to be taken to be admitted. Similarly, in ***'VIDHYADHAR VS. MANIKRAO AND ANOTHER', (1999) 3 SCC 573***, the Hon'ble Supreme Court has held that when a party to the proceeding does not enter into a witness box and states his/her case and does not offer himself/herself for cross-examination by the other side, a presumption would arise that the case set up by him/her is not correct.



10. Keeping in mind the aforesaid principle, this Court must consider whether the wife has made out a case seeking dissolution of marriage on the ground of cruelty. As already stated, there is no cross-examination and there is no objection filed by the husband to the petition filed by the wife. When there is no challenge to the petition as well as to the evidence led by the wife, this Court is of the view that the Family Court erred in rejecting the petition. It is also required to be noticed that the Family Court has not adverted its attention to the evidence led by the petitioner/wife relating to cruelty. The Family Court has proceeded to dismiss the petition on the ground that though the marriage was solemnised in 2009 when the wife was aged 15, the petition is not filed in 2015, three years after attaining majority.

11. As already noticed the husband has not filed an objection and has not cross-examined the wife. The testimony of the wife has remained unchallenged. Even before this court, none appeared opposing the appeal when the matter is heard today.



12. Considering the materials placed on record this Court is of the view that the wife has established her plea of cruelty and she is entitled to a decree of dissolution of marriage.

13. For the aforementioned reasons, this Court is of the view that the judgment passed by the Family Court, Mysuru which is under challenge has to be set aside. Hence the following:

ORDER

- (i) The judgment and decree dated 27.03.2017 passed by the I Additional Family Court at Mysuru in M.C. No.353/2015 are set aside. The petition filed under Section 13(1)(1-a) of the Hindu Marriage Act, 1955 seeking dissolution of marriage on the file of the I Additional Principal Court, Mysuru in M.C. No.353/2015 is allowed. Consequently, the marriage solemnised on 08.06.2009 between the parties to the proceeding is dissolved.



(ii) Accordingly, the appeal is ***allowed***.

Sd/-
JUDGE

Sd/-
JUDGE

GVP