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NC: 2023:KHC:26983-DB

MFA No. 4402 of 2017

C/W MFA No. 4403 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF AUGUST, 2023

PRESENT

THE HON'BLE MR JUSTICE G.NARENDAR

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO.4402 OF 2017 (FC)

C/W

MISCELLANEOUS FIRST APPEAL NO.4403 OF 2017 (FC)

IN MFA NO.4402/2017

BETWEEN:

...APPELLANT

(BY SRI. MUJTABA H., ADVOCATE)

AND:

...RESPONDENT

(RESPONDENT - SERVED)

Digitally signed
by
MARKONAHALLI
RAMU PRIYA
Location: HIGH
COURT OF
KARNATAKA



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THIS MFA IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT,1984, AGAINST THE JUDGEMENT AND DECREE DATED 06.04.2017 PASSED IN M.C.NO. 195/2013 ON THE FILE OF THE I ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, MYSURU, ALLOWING THE PETITION FILED UNDER SECTION 13(1)(ia) OF THE HINDU MARRIAGE ACT, FOR DISSOLUTION OF MARRIAGE.

IN MFA NO.4403/2017

BETWEEN:

...APPELLANT

(BY SRI. MUJTABA H., ADVOCATE)

AND:

...RESPONDENT

(RESPONDENT - SERVED)

THIS MFA IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT,1984, AGAINST THE JUDGEMENT AND DECREE DATED 06.04.2017 PASSED IN M.C.NO. 590/2015 ON THE FILE OF THE I ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, MYSURU, DISMISSING THE PETITION FILED UNDER SECTION 9 OF THE HINDU MARRIAGE ACT.

THESE APPEALS, COMING ON FOR HEARING, THIS DAY, **VIJAYKUMAR A. PATIL J.**, DELIVERED THE FOLLOWING:



JUDGMENT

These appeals are filed under Section 19(1) of the Family Courts Act, 1984 against the common judgment dated 06.04.2017 passed in M.C.No.195/2013 and M.C.No.590/2015 by the I Additional Principal Judge, Family Court, Mysuru (for short, 'the Family Court') by which the petition filed by the respondent-wife under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking dissolution of marriage on the ground of the cruelty was allowed and the petition filed by the appellant-husband under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights was dismissed.

2. Brief facts giving rise to filing of these appeals are that the marriage between the appellant and the respondent was solemnized on 05.09.2003 at Raghavendra Kalyana Mantapa, Mysuru. It is averred that the respondent-wife joined the matrimonial home at Kuvemupunagara, Mysuru and thereafter they have shifted their residence to Saraswathipuram, Mysuru and



lived together till September 2012. It is further averred that the appellant's father is a retired Assistant Registrar of Cooperative Societies; however, the appellant-husband is not so educated and the respondent-wife is a M.Sc. Graduate.

3. It is also averred that from the inception of marriage, the appellant-husband has not treated the respondent-wife properly. He was addicted to all sorts of bad habits like gambling, betting, horse racing, consuming liquor and his earnings were not sufficient to meet his lifestyle and habits. Due to financial constraints of the appellant-husband, he has started harassing the respondent-wife physically and mentally for money. The respondent-wife, to meet the demands of the appellant-husband, has given her jewelry and when she was unable to bear the harassment of appellant-husband, she used to go to her parents house and her aged parents used to send her back to the matrimonial home with some money, because they were afraid of social stigma.



4. It is pleaded that the appellant-husband used to handle the bank account of respondent-wife and he has obtained loan to the tune of Rs.15.00 to 20.00 Lakhs by misusing the signed blank cheques and squandered the loan amount on his bad habits. It is further pleaded that the respondent-wife entered into an agreement to sell her property to her cousin Sri.K.N.Yashwanth in May 2012 and received advance of Rs.10.5 Lakhs and the said amount was paid to the appellant-husband in order to avoid harassment.

5. It is also pleaded that strangers have started visiting the matrimonial home for demand of money from the respondent-wife and they have threatened to approach the Court of law and initiate criminal proceedings and they have showed the blank cheques signed by her. When these facts were brought to the notice of the appellant-husband, he told her to deal with such persons for having issued blank signed cheques.



6. In September 2012, the appellant-husband went away from the home and did not return, as he could not clear the loans received from the creditors. It is averred that the respondent-wife has paid Rs.28.00 Lakhs to the appellant-husband to satisfy his bad habits, in spite of the same he has tortured the respondent-wife physically and mentally and exposed her to criminal proceedings. Thus, the respondent-wife had filed a petition seeking for dissolution of marriage on the ground of cruelty.

7. The appellant-husband entered appearance before the Family Court by filing the statement of objections, and also filed petition under Section 9 of the Hindu Marriage Act, 1955 seeking for restitution of conjugal rights as a counter blast. It is averred that the respondent-wife did not have proper understanding with the parents of the appellant-husband and therefore, they have moved the matrimonial home to Saraswathipuram, Mysuru. It is further averred that the appellant-husband



is a Diploma holder in Computer Science and the respondent-wife is a M.Sc. Graduate, she hails from an affluent family and that he never demanded any money from her as alleged in the petition. It is also averred that appellant-husband neither asked the respondent-wife for her signed blank cheques nor he had borrowed Rs.15.00 to 20.00 Lakhs as alleged. It is also denied that he has received the advance of Rs.10.5 Lakh from Sri.K.N.Yashwanth. It is pleaded that the respondent-wife was not satisfied with the educational background of the appellant-husband, even then he was looking after his wife well. The respondent-wife used to visit her parents house frequently. It is further pleaded that the appellant-husband has not operated the bank account of respondent-wife and it is the respondent-wife who has spent the entire advance amount received for sale of immovable property and whenever the appellant-husband questioned the respondent-wife, she used to quarrel with him. It is also pleaded that the behaviour of the respondent-wife was rude, quarrelsome and she was



unable to adjust with appellant-husband and the appellant could not meet her expectations of lifestyle by providing money whenever she is in need, and is always ready to take back the respondent-wife into the matrimonial home.

8. It is averred that in October 2012, the respondent-wife left the matrimonial home as the appellant-husband was unable to meet her expenses, his request to rejoin the matrimonial home fall on the deaf ears of the respondent-wife. Hence, he was compelled to file a petition for restitution of conjugal rights and seeks to dismiss the petition filed by the respondent-wife seeking dissolution of marriage.

9. The Family Court based on the pleadings, framed the issues and recorded the evidence of the parties. The appellant-husband examined himself as RW-1 and the respondent-wife examined herself as PW-1 and her mother as PW-2 and got marked the documents as Exs.P-1 to P-9. The Family Court, on appreciation of



evidence, has allowed the petition filed by the respondent-wife by dismissing the petition filed by the appellant-husband. In the aforesaid factual background, these appeals have been filed by the appellant-husband.

10. Sri.Mujtaba H., learned counsel appearing for the appellant-husband submits that the Family Court has failed to consider the evidence on record in its proper perspective. It is submitted that the Family Court has committed an error in referring to the proceedings taken place during the course of conciliation process and has drawn adverse inference. It is further submitted that respondent-wife has failed to prove the grounds of cruelty by proper pleading and evidence, despite the same, the Family Court proceeded to dissolve the marriage without considering the efforts made by the appellant-husband to bring back the respondent-wife to matrimonial home. It is also submitted that pledging of jewelry by the appellant-husband is only for the purpose of business and not with an intention to harass the respondent-wife as alleged in



the petition, however the Family Court has failed to appreciate the same in proper perspective.

11. It is contended that the Family Court has failed to take note of the fact that it is the respondent-wife, who has borrowed money from creditors for her personal expenses and the cheques were bounced and it is not the appellant-husband who has borrowed the loan from creditors. The Family Court has committed an error in coming to the conclusion that appellant-husband has borrowed the loan from his friends viz., Srinivasa and N.Chandrashekara, for his necessities and issued the cheques of respondent-wife towards the repayment of loan. The said finding of the Family Court is contrary to evidence of RW-1 and during the cross-examination, he has categorically stated that he has not misused the cheques as alleged.

12. It is submitted that the Family Court has committed an error in accepting the version of



respondent-wife and dissolving the marriage by dismissing the petition filed by the appellant for restitution of conjugal rights as the appellant-husband has clearly stated in his evidence that he is ready and willing to lead marital life. The Family Court has committed grave error in appreciating the pleadings and evidence on record, resulting in dissolution of marriage, which is required to be interfered in these appeals. Hence, he seeks to allow the appeals filed by the appellant-husband.

13. The respondent-wife though served, remained absent.

14. We have heard the learned counsel for the appellant, perused the memorandum of appeal and the trial Court records.

15. The parties to the proceedings do not dispute the relationship and do not dispute that their marriage was solemnized on 05.09.2003 at Mysuru. The respondent-wife has filed petition seeking for dissolution of marriage



on the ground of cruelty on 20.04.2013 alleging that the appellant-husband was addicted to bad habits and he use to harass the respondent-wife and insisted to bring more money from her parents house. It is pleaded that the appellant-husband has taken the jewelry of respondent-wife and pledged to meet his expenses; however, he continued his torture to respondent-wife and insisted for more money, hence she used to secure money from her parents and used to meet the demands of her husband. The appellant has admitted that the jewellery are pledged for the purpose of his business. However, it is not forthcoming from the evidence what business the appellant was carrying on, when he has got back the pledged jewellery and given it to the respondent-wife. This conduct of the appellant-husband establishes that he was in need of money for his personal habits, as alleged by the wife.

16. It is specifically pleaded and the same is reiterated in the evidence of PW-1 that the appellant-



husband used to operate the Savings Bank Account of the respondent-wife, he has given blank signed cheques of respondent-wife to the creditors without the knowledge of respondent-wife and the creditors used to visit the matrimonial home and insist the respondent-wife for repayment of loan amount. It is not in dispute that some of the creditors have initiated criminal proceedings against the respondent-wife for dishonour of cheques, which were issued by the appellant-husband by using her signature on the blank cheques. The appellant has not produced any cogent evidence to disbelieve the allegation of the respondent-wife.

17. The respondent-wife has specifically asserted that she has sold her immovable property and given the entire money to appellant-husband to clear the loan amount, despite the same, the appellant-husband has not changed his behaviour and continued to harass physically as well as mentally to the respondent-wife. It is specifically pleaded by respondent-wife that in the month



of September 2012, the appellant-husband ran away from home and he could not return the loans obtained and it is the respondent and her parents who have paid Rs.28.00 Lakhs to the appellant-husband to meet his demands, in spite of the same he has continued his harassment and torture. The aforesaid narration of incidents of physical and mental cruelty are reiterated in the evidence of PW-1.

18. The appellant-husband has denied the allegations of cruelty in his written statement, however he could not elicit any admission in the cross-examination of PW-1. The respondent-wife, in order to substantiate the allegations of cruelty, has examined her mother as PW-2, who has categorically stated that the appellant was having bad habits and borrowed money from different persons and he has pledged the gold ornaments of her daughter. The said witness has also been cross-examined by the appellant but nothing adverse has been elicited.



19. The respondent-wife has placed on record Exs.P-3, to P-8, the legal notices sent to respondent-wife by the creditors and the said notices have been duly replied by the counsel for the respondent-wife, wherein it is specifically stated that the appellant-husband is a chronic gambler, he was looking after the bank transactions of respondent-wife and he has taken signature of respondent-wife in blank cheques and the same were issued by him, hence the respondent is not liable to clear those dues. Pursuant to the said notices, the creditors have initiated criminal proceedings against the respondent-wife.

20. The appellant-husband in his written statement and evidence has only denied the allegations of cruelty however, he has not taken any stand with regard to using of signed cheques of the respondent-wife, which clearly goes to show that the appellant-husband has made the respondent-wife a scapegoat and made her to face criminal proceedings initiated by his creditors. These acts



of the appellant-husband have caused humiliation and mental cruelty, which have been properly pleaded and proved by respondent-wife before the Family Court.

21. The Family Court has recorded the categorical finding that the respondent, being the house wife, has neither utilized the loan amount nor she has utilized the sale consideration amount received for sale of immovable property and it is the appellant-husband, who has made use of the said amount and made the respondent-wife to suffer due to the acts of the appellant-husband. The said finding of the Family Court is based on the documentary evidence at Exs.P-3 to P-9, which are also corroborated with the oral testimony of PWs-1 and 2.

22. The Family Court has recorded a categorical finding that the respondent-wife has proved that the appellant-husband has caused mental cruelty. The said finding of the Family Court is based on material on record



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and they are neither perverse nor contrary to the evidence on record calling for interference in these appeals.

23. For the aforementioned reasons, we do not find any merit in these appeals. Accordingly both the appeals fail and are hereby ***dismissed***. No order as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

BSR
List No.: 1 Sl No.: 35