

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13TH DAY OF DECEMBER, 2013

PRESENT

THE HON'BLE MR. JUSTICE K.L.MANJUNATH

AND

THE HON'BLE MR. JUSTICE A.V.CHANDRASHEKARA

M.F.A. NO.11067/2012 (MC)

BETWEEN

MR VENKATESULU GANGINENI
S/O G.RAMASWAMY,
AGED ABOUT 40 YEARS,
R/A. FLOT NO.301
SHREE HOMES PARK VIEW
NO.911, VIJAYA BANK LAYOUT
BILEKAHALLI, BANGALORE-560076.

... APPELLANT

(BY SRI HARISH H V, ADV.)

AND

MRS SUPRAJA IRRUKUMATI
D/O. I.SRINIVASULU,
W/O VENKATESULU GANGINENI,
AGED ABOUT 34 YEARS,
R/A NO.381, VIDYANAGAR,
KOTAMANDAL,
NELLORE DISTRICT. 524413

ALSO AT
R/AT NO.B6901, ELITA PROMINENT,

J.P.NAGAR, 7TH PHASE,
BANGALORE-560076

... RESPONDENT

(BY SRI. RAJAGOPALA NAIDU, ADV.)

MFA FILED UNDER SEC.19(1) OF FAMILY COURTS ACT, AGAINST THE JUDGMENT AND DECREE DATED 20.10.2012 PASSED IN M.C.NO.2309/2007 ON THE FILE OF THE PRL. JUDGE, FAMILY COURT, BANGALORE, DISMISSING THE PETITION FILED UNDER SEC.13(1)(ia) OF THE HINDU MARRIAGE ACT FILED FOR DIVORCE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **A.V.CHANDRASHEKARA, J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed under Section 19 of the Family Courts Act, 1984 challenging the final order dated 20.10.2012 passed by the Principal Judge, Family Court, Bangalore in MC No.2309/2007.

2. The appellant herein was the petitioner and respondent herein was the respondent in the said case. The parties will be referred to as petitioner and respondent.

3. The petitioner had filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking decree of divorce on the ground of cruelty. The said petition has been dismissed after contest and this order is called in question on various grounds as set out in the appeal memo.

4. The marriage between the parties was solemnized on 10.02.2000 at Tirupathi according to Hindu Rites and Customs. Out of their wedlock, they have two children born on 20.06.2002 and 21.08.2007 respectively. The petitioner is a Post Graduate in Engineering (MS) and Engineer by profession. The respondent is also an Engineering Graduate. She was pursuing M.Tech.

5. According to the petitioner, the respondent was not behaving as a matured lady and used to behave like a street lady and embarrass him in front of his

relatives and also her relatives. It is further alleged that she used to call him as 'vadhava' and shout loudly in streets calling him a dishonest, stupid and a cheat. It is further alleged that when he took her to U.S.A after marriage, she started quarrelling with him taking undue advantage of the local laws of America and threatened to fix him in dowry demand case. It is further alleged that respondent even threatened to commit suicide if parents of the petitioner continued to live in the same house and she wanted him to stop all communications with his parents and other family members. He is stated to have been threatened to file a false case. The respondent used to abuse him in front of others during social gathering. She had made strong allegations on the ground that the petitioner has extra marital relationship. In view of these facts, it amounted to cruelty and hence, he filed a petition for grant of decree of divorce.

6. The respondent had appeared before the Trial Court and filed detailed objections denying all the material averments relating to alleged cruelty. Various allegations made against the respondent are stated to be fabricated and one invented for the purpose of filing the petition. According to the respondent, during her first confinement, petitioner invited his parents to USA and they did not show love and affection; on the other hand, created gulf between her and the petitioner and therefore, she discontinued her studies. She had served her mother-in-law when she underwent operation in hospital in Bangalore. The petitioner and his parents conspired to send her from USA to India and petitioner used to quarrel with her in presence of her mother. He had sent several emails from USA stating that he would break the marriage. It is her case that she stayed in India till June 2003 and after repeated requests, she again went to USA. She has stated that she comes from

a descent family and she never used filthy language to her husband or his parents. After sending for delivery, the petitioner did not turn up and therefore, the children are in her custody. According to her, the petitioner had collected dowry of Rs.6,00,000/- from her parents and invested the same by purchasing a property in his name. He is stated to have purchased a flat in Vijaya Bank Layout. According to her, the petitioner has illicit relationship with a lady by name Shwetha Kadiyala and she saw both of them together on 21.2.2012. On questioning about the same, he not only assaulted her and snatched her mobile and tried to throw her out of the flat. He has stated to have living adulterous life with Shwetha Kadilaya D/o Govindaiah K and Rajani K. With these allegations, she had requested the Court to dismiss the petition.

7. The petitioner is examined as PW-1 and has got marked 19 exhibits. Respondent has examined herself as RW-1 and has got marked 9 exhibits.

8. After hearing the arguments, the learned Judge has dismissed the petition by framing following points for its consideration:-

“Whether the petitioner proves that the respondent subjected him to cruelty in the matrimonial home within the meaning of Sec.13(1)(ia) of the Hindu Marriage Act ?

9. We have heard the arguments of the learned counsel for the parties.

10. It is contended that the Trial Court has not properly analyzed the oral and documentary evidence in right perspective and has adopted wrong approach to the real state of affairs, moreso, when the petitioner had gone to the extent of alleging adulterous life. It is further

alleged that the acts of the respondent which amounted to cruelty has been lightly ignored by the Trial Court. It is further contended that the petition should have been allowed as the burden cast upon the petitioner has been effectively discharged. The impugned order is stated to have been opposed to law and probabilities and it is prayed to allow the petition.

11. After hearing the arguments and perusing the records, following points arise for our consideration:-

“Whether the case on hand is fit to be admitted ?”

12. It is true that respondent had made allegations against the petitioner of adultery in her written statement. Even she tried to pursue the same while cross examining PW-1, but she did not pursue the same while she was examined herself. Her entire evidence is in regard to cruelty meted out to her by the

petitioner. Her allegation is that the petitioner himself created an email in her name, but she did not object the petitioner for creating such email and using such email account. She has specifically deposed that petitioner was cohabiting regularly with Shwetha Kadilaya and was taking her to social gatherings, movies and picnic etc.

13. In this regard, she produced photographs which are marked as R-1 to R-4. Ofcourse there is no major differences between them upto 2003. The main allegation of the petitioner is that the respondent was calling him "Vadhava" "orey rascal". As rightly pointed out by the learned Judge, the petitioner has not disclosed the circumstances under which the alleged abusive words were used. The words have no meaning by themselves when the context in which they are used. Hence, such words cannot be taken out of the circumstances to say that those words are either

abusive or derogative. We do not have anything to know as to why his wife insulted him in the above manner. It is further alleged that she used to call him either as dishonest or stupid in public as also in front of his family members and relatives. To prove this, he should have examined the relatives or inmates before whom he was humiliated. He has not done so and therefore, we can safely conclude that except the self serving testimony of the petitioner, there is nothing worthwhile in the evidence to establish that his wife is in the habit of insulting him.

14. Whatever is attributed to his wife is between the period of birth of the first child and the second child. It has come in the evidence that both of them lived together after returning from USA and then only she gave birth to the second child. There is nothing on record to show that during the intervening period, the petitioner had either objected to alleged behaviour of his

wife or taken any action in that regard. It is only after the birth of second child, the petitioner has made such allegations. It appears that those allegations are made with an intent to seek divorce. Therefore, we can safely conclude that whatever is alleged as cruelty by the petitioner cannot be considered as cruelty in strict sense; but only usual family wear and tear and such instances cannot be blown out of the proportion to make them as ground seeking divorce on the ground of cruelty. Even otherwise, we can safely conclude that the so called instances of cruelty have been virtually condoned by him and thereafter they lived together happily and his wife gave birth to the second child. If really the relationship had been strained by the parties because of alleged cruelty or because of the behaviour of his wife, there would not have been any cohabitation and second child would not have born.

15. In so far as extra marital affair is concerned, both have accused each other and none of them have placed any convincing material to that effect. As already discussed, wife has not made any attempt to pursue the allegations in regard to extra marital relationship of her husband in his evidence and no argument was advanced on this point. Anyhow it can be said that the allegations made by the respondent against her husband having contact with Shwetha cannot be considered as ill founded in view of the certified copy of private complaint PCR No.7481/2012 marked as 18 and 19. Admittedly, parties were residing separately during pendency of the petition and infact the petitioner has not made any attempt to prove allegation made against his wife about the same extra martial relationship.

16. Be that as it may, we can hold that both the parties have not been able to substantiate their allegation and counter allegation in regard to infidelity.

17. In the evidence of RW-1, it is deposed that petitioner was taking Shwetha Kadilaya to many social gatherings, movies and picnic. She has produced photographs at Ex.R-1 to 4 which depict the company of respondent with the petitioner along with her child. The misunderstandings that had cropped up due to temperamental differences between the parties cannot be considered as clinching evidence to grant decree of divorce on the allegation of cruelty. The learned Judge has considered all these facts in the light of various circumstances and thereafter has come to the conclusion that the petitioner has not been able to prove the allegation of cruelty satisfactorily. Hence, he is justified in rejecting the petition filed for divorce.

18. Therefore, we are of the considered opinion that point No.1 has to be answered in the affirmative.

19. In view of holding point No.1 in the affirmative, the appeal is liable to be dismissed confirming the impugned order.

ORDER

20. Appeal filed challenging the final order passed by the Principal Family Court, Bangalore in M.C.No.2309/2007 dated 20.10.2012 is dismissed as not fit for admission.

Parties to bear their own costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

DM