

IN THE HIGH COURT OF KARNATAKA AT BANGALORE**DATED THIS THE 1ST DAY OF JUNE, 2012****P R E S E N T****THE HON'BLE MR. JUSTICE N. K. PATIL****AND****THE HON'BLE MR. JUSTICE B.V.PINTO****M.F.A. No. 10164 of 2011 (FC)****Between**

Smt S Divya
Wife of K. Narendra Babu,
D/o Sampangi,
Aged about 26 Years,
Residing At No.136,
Krishnappa Layout,
2nd Cross, Thindlu,
Vidyaranyapura,
Bangalore – 560097
Now residing at the above address.

... Appellant

(By Smt : Jamuna Bai, Advocate)

And

K Narendra Babu
S/o N. Krishnappa,
Aged about 30 Years,
Residing At Tank Road,
Behind Maralusiddeshwara

Temple, Near New Bus Stand,
Chickballapura Town
Chickballapura - 56210

... Respondent

(By Sri M Jaiprakash Reddy, Advocate)

This MFA is filed U/s 28(1) of the Hindu Marriage Act, against the judgment and decree dated:17.08.2011 passed in M.C.No.44/2009 on the file of the Senior Civil Judge and CJM, Chickballapur, allowing the petition filed U/s 13 of Hindu Marriage Act, for decree of divorce.

This MFA coming on for Final Hearing, this day, **B.V.PINTO J**, delivered the following:

J U D G M E N T

This appeal is filed challenging the judgment dated 17.08.2011, in M.C.No.44/2009 on the file of the learned Senior Civil Judge and CJM, Chickballapur allowing the petition filed by the husband against the wife for dissolution of marriage and decree of divorce under Section 13 of Hindu Marriage Act, 1955.

2. The husband has filed an application on the ground that his marriage with the respondent wife was solemnised on 18.04.2008 and after the marriage, they lived together as husband

and wife only for few days. In the first week of June, 2008 the respondent left the company of the petitioner without any reasons and settled at her parents house. Despite several requests the wife did not join the husband and therefore, a panchayath was held and even then, she did not heed to the words and has not returned to matrimonial home to lead happy marital life. Thereafter, the petitioner got issued legal notice to the respondent calling upon her to come back and join the matrimonial house and lead happy married life. Despite legal notice, the respondent did not come and join the petitioner – husband. Hence, the petitioner husband is constrained to file the petition for decree of divorce.

3. In response to the notice to the respondent, the respondent appeared through Counsel and resisted the petition by filing statement of objections. She has stated that the averments made by the petitioner are false and further stated that her parents have spent Rs.8,00,000/- towards her marriage by giving gold ornaments and other materials. It is stated by her that the husband was having the

habit of consuming liquor, smoking and coming late to the house in the night and did not take care of the welfare of the wife and he was always in the control of his parents. Her husband and his family members were demanding dowry and pestering her to bring more dowry from her parents and subsequently, her husband has thrown her out of the house and did not provide any food, clothing and shelter and deserted her. She has also stated that husband has totally neglected the respondent and it is her case that the case filed for decree of divorce is false and frivolous.

4. Thereafter the petitioner got examined himself before the trial Court as PW.1 and produced documents Exs.P.1 to P.7. However, the respondent neither appeared before the Court nor adduced any evidence in support of her case neither oral evidence nor produced any documents. The trial Court on perusal of the evidence on record passed the decree of divorce against the appellant wife. The wife has come up in appeal before this court.

5. Heard Smt.Jamuna Bai, learned Counsel for the appellant

and Sri M.Jaiprakash Reddy, learned Counsel for the respondent.

6. It is submitted by the learned Counsel for the appellant that the appellant was not informed about the hearing dates and therefore, she could not contest the matter even though she has filed statement of objections and also application under Section 24 of Hindu Marriage Act praying for maintenance from her husband.

7. On a careful perusal of the order sheet of the trial Court, it is seen that after several adjournments on 30.10.2010, the Counsel for the appellant / wife has filed the statement of objections and also application under Section 24 of Hindu Marriage Act and matter was posted to 11.11.2010, and thereafter, the matter was adjourned to 30.11.2010 and to 22.01.2011. The matter was posted to 19.02.2011 for hearing on I.A.No.1. On the next date of hearing, that is on 02.04.2011, the counsel for the husband submitted that the respondent is absent and she is not coming at all and in view of the said submission the trial Court posted the matter for evidence to

21.04.2011. The respondent – husband filed affidavit evidence and got marked Exs.P.1 to P.7 and the cross-examination of PW.1 is taken has nil. The petitioner's evidence was closed and matter was posted for evidence of the respondent on 26.05.2011. On 26.05.2011, the respondent was absent and hence, the evidence of respondent is taken as nil. Thereafter, on 28.05.2011, two applications were filed by the Counsel for respondent and the trial Court allowed the said applications with a cost of Rs.300/- and matter was posted to 18.06.2011. On 18.06.2011, again PW.1 was present but the appellant wife was absent and therefore, the prayer for adjournment was rejected and cross-examination of PW.1 is again taken as nil and the matter was posted for arguments on 16.07.2011. Thereafter, on 17.08.2011, the impugned judgment and decree has been passed allowing the petition filed by the petitioner/husband.

8. On a perusal of the papers filed, it is seen that all the three I.As. namely I.A.Nos.1, 2 and 3 filed by the appellant wife

were supported by the memorandum of facts signed by the advocate and they are not supported by the affidavit of the appellant-wife. It is obvious that the appellant wife has not co-operated with the advocate to proceed with the matter. Nevertheless, the papers do not show that the appellant was aware of the proceedings since, there was no material to show that she was informed about the proceedings of the case. Hence, in order to meet the ends of justice, we are of the considered opinion that the appellant deserves to be given an opportunity to prove her case.

9. In that view of the matter, we are inclined to allow the appeal. Therefore, this appeal is allowed and the judgment and decree passed by the learned Senior civil Judge and CJM, Chickballapur is set aside and the matter is remanded to the Court below with a direction to proceed with the matter in accordance with law from the stage of cross-examination of PW.1.

10. It is directed that the trial Court shall give reasonable

opportunity to both the parties to adduce further evidence if they so desire and thereafter dispose of the matter in accordance with law.

Both the parties are directed to be present before the Court below on 25.06.2012 without fail to take further date of hearing from the Court below.

Office is directed to transmit the trial court records to the trial Court forthwith.

Sd/-
JUDGE

Sd/-
JUDGE

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