

Deepak V Kovoov, vs Dr.Priya Thomas,

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Court : Kerala

Decided On : Jul-04-2023

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Mrs. Justice Sophy Thomas

Appeal No. : Mat.Appeal/644/2022

Appellant : Deepak V Kovoov,

Respondent : Dr.Priya Thomas,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
TUESDAY, THE 4TH DAY OF JULY 2023 / 13TH ASHADHA, 1945
MAT.APPEAL NO. 644 OF 2022 AGAINST THE ORDER/JUDGMENT IN
OPDIV 560/2016 OF FAMILY COURT, PATHANAMTHITTA
APPELLANT/RESPONDENT: xxxxx BY ADVS. D.KISHORE MEERA
GOPINATH R.MURALEEKRISHNAN (MALAKKARA)
RESPONDENT/PETITIONER: xxxxx BY ADVS. K.SASIKUMAR
S.ARAVIND THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY
HEARD ON 04.07.2023, THE COURT ON THE SAME DAY DELIVERED

THE FOLLOWING: Mat.Appeal No.644 of 2022 2 A.MUHAMED
MUSTAQUE &

SOPHY THOMAS, JJ.

----- Mat.Appeal No.644 of 2022
----- Dated this the 4th day of July, 2023

JUDGMENT

Sophy Thomas, J.

The appellant herein is the respondent in OP (Div) No.560 of 2016 on the file of Family Court, Pathanamthitta who suffered a decree of divorce under Section 10(1)(x) of the Divorce Act.

2. The marriage between the appellant and respondent was solemnised on 14.06.2014 as per Christian religious rites and custom. It was the second marriage of both the parties. The

wife alleged that their marriage was not consummated.

divorce under Sections 10(1)(vii), (ix) and (x) of the Divorce Act.

3. The husband opposed the petition refuting all the

allegations made by the wife. According to him, she was having relationship with one of her seniors and it was continued even after they shifted their residence to Bangalore. She deserted the Mat.Appeal No.644 of 2022 3 husband on 29.03.2015. In fact she was a cruel wife and she never performed her duties as a wife.

4. After formulating necessary issues, the parties went on

trial. Before the Family Court, PW1 was examined from the side of the wife and RW1 was examined from the side of the husband. Exts.A1 to A5 and B1 to B17 were marked.

5. After analysing the available facts and evidence, learned

Family Court Judge found that the grounds urged under Sections 10(1)(vii) and (ix) of the Divorce Act were not proved by the wife. But, divorce was granted under Section 10(1)(x) of the Act, on the ground of cruelty. Challenging the decree of divorce granted under Section 10(1)(x) of the Divorce Act, the husband has preferred this appeal.

6. Heard learned counsel for the appellant and learned counsel for the respondent.

7. On going through the evidence and documents, it could

be seen that the matrimonial life of the appellant and respondent was not happy and both of them were having complaints against each other. The allegations of non-consummation and desertion Mat.Appeal No.644 of 2022 4 could not be proved by the wife. No appeal has been preferred by the wife against that finding. Now the challenge is by the husband against the divorce granted on the ground of matrimonial cruelties.

8. Admittedly, the marriage between the parties lasted hardly for one year, and they were staying together, just for two

days in a week. After 27.03.2015, they are living separate. There was no clear cut evidence to prove the mental or physical cruelties meted out to the wife by the husband, though her case was that she was slapped on her face by the husband and left the house without saying anything.

9. On going through the evidence, it could be seen that

both parties are making serious complaints against each other, which prevents them from continuing their matrimonial life. For the last eight years, they are living separate also. But, they are not ready to dissolve their marriage on mutual consent, so as to have a peaceful separation without leaving any stigma.

10. In Samar Ghosh vs. Jaya Ghosh [(2007) 4 SCC 511], the Honble Apex Court, while considering the impact and Mat.Appeal No.644 of 2022 5

impropriety of refusing to sever the marriage tie despite the irretrievable break down, held that, where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases does not serve the sanctity of marriage; on the contrary it shows scant regard for the feelings and emotions of the parties. In such situations, the refusal may lead to mental cruelty.

11. In Naveen Kohli vs. Neelu Kohli [(2006) 4 SCC 558], in paragraphs 75 and 76, the Honble Apex Court held as follows:

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a

spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist. Mat.Appeal No.644 of 2022 6

12. In Beena vs. Shino G Babu (2022 (2) KLT 139),

a Division Bench formed by us held that, if the court is able to form an opinion that due to incompatibility, the marriage failed and one of the spouses was withholding consent for mutual separation, the court can very well treat that conduct itself as cruelty. If one of the spouses is refusing to accord divorce on mutual consent after having convinced of the fact that the marriage failed, it is nothing but cruelty to spite the other spouse. No one can force another to continue in a legal tie if the relationship is deteriorated beyond repair.

13. On applying the ratio in the decisions cited supra to the

facts in the case on hand, we have no hesitation to hold that,

their marriage is irretrievably broken and has become a deadwood. The parties are living separate for the last eight years, without showing any symptoms of reunion. Both parties are alleging cruelty against each other. Moreover, the husband is having allegations of infidelity also against her. But, even then the parties are not ready for a divorce on mutual consent. It amounts to cruelty, if at all the respondent/wife could not prove Mat.Appeal No.644 of 2022 7 the allegations of cruelty pleaded in her petition. So, we find no reason to maintain the marital status between the appellant and respondent, which is proved to be wrecked beyond any hope of salvage. Hence, the appeal is liable to be dismissed. In the result, the appeal is dismissed. No order as to costs. Sd/- A.MUHAMED MUSTAQUE JUDGE Sd/- SOPHY THOMAS JUDGE smp

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