

Keerthi Aravind vs Anilkumar

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Court : Kerala

Decided On : Jul-06-2023

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

Appeal No. : Mat.Appeal/793/2018

Appellant : Keerthi Aravind

Respondent : Anilkumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
THURSDAY, THE 6TH DAY OF JULY 2023 / 15TH ASHADHA, 1945
MAT.APPEAL NO. 793 OF 2018 OP 1387/2013 OF FAMILY COURT,
MAVELIKKARA

APPELLANT/PETITIONER: KEERTHI ARAVIND, AGED 34 YEARS,
D/O.ARAVINDAKSHAN PILLAI, SAVITHRI NIVAS, KARIMULACKAL,
KOMALLOOR P.O., CHUNAKKARA VILLAGE, MAVELIKKARA TALUK.
BY ADV SUNIL K.R. RESPONDENT/RESPONDENT: ANILKUMAR,
AGED 44 YEARS, S/O.KUTTAPPA PANICKER, HARI MANDIRAM

(VELOOR), VALIYAKULANGARA P.O., KULANJIKARAZHMA, MAVELIKARA. THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 06.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mat.Appeal No.793/2018 2

JUDGMENT

Sophy Thomas, J.

The petitioner/wife in OP No.1387 of 2013 on the file of Family Court, Mavelikkara, is before us challenging the decree by which her prayer for dissolution of marriage was dismissed.

2. The marriage between the appellant and respondent was solemnised on 25.02.2007 at Divya Auditorium, Chettikulangara, as per Hindu rites and custom. Her matrimonial life was miserable as the husband and in-laws illtreated her physically as

well as mentally. The respondent/husband, who was employed abroad at the time of marriage quit his job and came back to his native and he married the appellant with a view to liquidate his financial liabilities. When the ill-treatment became unbearable, the appellant informed her family members, and the father of the appellant approached NSS Karayogam to intervene, for resolving their issues. Even then the matter could not be settled. So she

approached the Family Court for dissolution of marriage. The respondent/husband opposed that petition contending that himself or his parents never illtreated the appellant physically or Mat.Appeal No.793/2018 3 mentally. He had to quit his foreign job only to continue the infertility treatment advised by Doctors. He was ever willing to live with his wife. But she was taken away by her parents on 26.12.2012 without any reason. Since he wanted reunion, he

filed OP for restitution also. The Family Court found that the appellant could not prove the incidents of ill-treatment alleged against the respondent and if at all, there was any ill-treatment, as alleged by her, it was only the normal wear and tear

of a matrimonial life.

3. Before the Family Court, PWs 1 to 5 were examined and

Exts.A1 to A3 were marked from the side of the appellants. RWs 1 and 2 were examined and Exts.D1 to D5 were marked from the side of the respondent. Ext.X1 was marked as witness exhibit.

4. Now we are called upon to answer whether there is any illegality, irregularity or impropriety in the impugned judgment. Heard learned counsel for the appellant and learned counsel for the respondent.

5. Admittedly the marriage between the appellant and respondent was solemnised on 25.02.2007. No issues were born

in their wedlock. It is also admitted that from 26.12.2012 onwards

she was taken away by her father without any reason. But according to the appellant, she was illtreated by the respondent and his parents and when it became unbearable, she informed her parents and she was taken back to her house. She would say that her father approached the NSS Authorities also to intervene for an amicable resolution of their disputes. But it could not succeed and so she approached the court to dissolve the marriage. If the wife was living happily with her husband and in-laws in her matrimonial home, in no probability, she would return to her paternal house. Even when the respondent is alleging that the appellant was taken away by her father to her paternal house, no specific reason is stated by him. No father who had given away his daughter in marriage and living happily with her husband, will never take back his daughter to her paternal house. So obviously, there were clear reasons which prevented the wife from continuing her matrimonial life with the respondent. She would allege that two times her pregnancy was aborted due to the illtreatment meted out by the respondent and his family members. Moreover, she was alleging physical and mental torture from the part of the husband and in-laws.

6. Since 26.12.2012, the parties are living separately. Mat.Appeal No.793/2018 5 Nothing fruitful came out after this 11 years of separation. Even then, the

respondent/husband is not willing for a divorce on mutual consent.

7. In *Samar Ghosh vs. Jaya Ghosh* [(2007) 4 SCC 511],

the Honble Apex Court, while considering the impact and 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.

8. 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.
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9. 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.

10. 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 11 years,

without showing any symptoms of reunion. The appellant says that because of the cruelties meted out to her by the respondent and his parents, she is not able to continue her matrimonial life with him anymore. That is being proved by the long separation of 11 years. But even then, the respondent is not ready for divorce

on mutual consent. It amounts to cruelty if at all the appellant Mat.Appeal No.793/2018 7 could not prove 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 allowed dissolving their marriage. In the result, the appeal is allowed dissolving the marriage between the appellant and respondent solemnised on 25.02.2007. No order as to costs. Sd/- A.MUHAMED MUSTAQUE JUDGE Sd/- SOPHY THOMAS JUDGE DSV/- Mat.Appeal No.793/2018 8 APPENDIX OF MAT.APPEAL NO. 793 OF 2018 APPELLANTS ANNEXURES: ANNEXURE-A1 THE COPY OF THE ORDER DATED 16.02.2018 IN O.P.NO.1387/2013 OF THE FAMILY COURT, MAVELIKKARA. RESPONDENTS ANNEXURES: NIL

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