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Rajesh S.a vs Sandhya Devi.V

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Court : Kerala

Decided On : Sep-07-2023

Judge : Honourable Mr. Justice Amit Rawal,Honourable Mrs. Justice C.S. Sudha

Appeal No. : Mat.Appeal/767/2021

Appellant : Rajesh S.a

Respondent : Sandhya Devi.V

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MRS. JUSTICE C.S. SUDHA THURSDAY, THE 7TH DAY OF SEPTEMBER 2023 / 16TH BHADRA, 1945 MAT.APPEAL NO. 767 OF 2021 AGAINST THE JUDGMENT DTD 23.8.2017 IN OP 140/2014 OF FAMILY COURT,THIRUVANANTHAPURAM APPELLANT/PETITIONER: RAJESH S.A., AGED 39 YEARS, S/O. A.SIVARAMAKRISHAN, T.C.NO.11/2050 (1), ARAMANA, B-41, KANAKA NAGR, VELLAYAMBALAM, KOWDIAR P.O., THIRUVANANTHAPURAM DISTRICT, PIN-695 003 BY ADVS.G.PRADEEP KUMAR NISHIN GEORGE VIJAYABABU HAFY PUNTHALA WILSON BIJU ABRAHAM (KAIPPANPLACKAL)

V.JAYADHAR ANNAMMA PHILIP E.S.SIMLA JITHYSUSOJA S. RESPONDENT/RESPONDENT: SANDHYA DEVI V., AGED 37 YEARS, D/O.VIJAYAKUMARI, DEVI BHAVAN, POONKODE, BHAGAVATHYNADA P.O., BALARAMAPURAM, THIRUVANANTHAPURAM DISTRICT, PIN-695 501 BY ADV MAJIDA.S THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 07.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: AMIT RAWAL & C.S.SUDHA, JJ. ----------

---------- Dated this the 7th day of September, 2023

JUDGMENT

C.S.Sudha, J.

This appeal under Section 19(1) of the Family Courts Act, 1984

has been filed by the petitioner-husband against the judgment and decree dated 23/08/2017 in O.P.No.140/2014 on the file of the Family Court, Thiruvananthapuram by which his prayer for divorce on the ground of cruelty has been dismissed. The respondent herein is the respondent/wife in the proceedings before the Family Court. The parties will be referred to as described in the original proceedings.

2. The case of the petitioner/husband as narrated in O.P.No.140/2014 in brief is - The marriage between the petitioner and the respondent was solemnised on 10/02/2011 as per the rites and customs of the

community to which they belong. Right from the initial stage of the marriage the respondent/wife adopted an indifferent attitude to the petitioner. The respondent, a devotee of Harekrishna Asram, was not interested in having a conjugal relationship with the petitioner. The respondent was under the belief that coitus with the petitioner/husband would prevent her from understanding 'Krishna Consciousness' and therefore she would limit coitus between the parties to once a

month. The respondent in order to avoid coitus with the petitioner, used to keep chanting 'hare krishna mantra' during the course of night. The respondent never maintained good relation with the

parents of the petitioner. Petitioner is the only son and hence has the responsibility and duty to take care of his aged parents. This was not to the liking of the respondent, who wanted the petitioner to herself. She wanted the petitioner to reside along with her in the house, which was not agreed to by the petitioner. The respondent's mother used to unnecessarily interfere in the family life of the petitioner. The respondent never maintained cordial relations with the petitioner's parents. On an occasion, the respondent had even tried to physically assault his mother. Even after the birth of a son, the respondent was not ready to mend her ways. She never used to look after the child properly. On 01/03/2013 she sought permission of the petitioner to go to her parent's house. Thereafter she has not returned to the matrimonial

home inspite of several requests. The petitioner filed O.P.No.601/2013 seeking restitution of conjugal rights. Inspite of the same, the respondent was never ready to join the petitioner. The relationship between the petitioner and the respondent is broken irretrievably and there is no chance of a reunion. Hence the petition for divorce on the ground of cruelty.

3. The respondent/wife filed objection denying all the allegations

raised and contended that she was always ready and willing to join the petitioner and perform her marital obligations. However, the petitioner was never interested in carrying on the relationship with her. After the marriage, the petitioner and the respondent had lived together quite happily. However, the parents of the petitioner were not happy with the marriage. At the time of marriage, the petitioner had no permanent job. He obtained a job and became a permanent employee much later. Thereafter, the parents of the petitioner were of the opinion that the petitioner could have got a better alliance from a better family. That became the reason for the unhappiness and disputes between the petitioner and the respondent. The petitioner's

parents adopted a hostile attitude towards the respondent. When the respondent conceived, the petitioner's parents began misbehaving with her. Whenever her parents used to visit her matrimonial home, the parents of the petitioner used to raise unfounded allegations against her. The petitioner's parents never allowed the respondent to mingle with the petitioner freely or have any outings with the petitioner. The attitude of the petitioner and his parents never changed even after the birth of the child. It only became worse and then they even began to assault her physically. On one occasion, the petitioner's father abused her and also attempted to physically assault her. The petitioner and his parents used to abuse and insult the respondent in the presence of her parents and when the harassment and mistreatment became intolerable, the respondent was forced to leave her matrimonial home along with her child. In order to escape from the criminal liability of physically assaulting the respondent, the petitioner filed O.P.No.601/2013 seeking relief of restitution of conjugal rights. The respondent was always ready and willing to live with the petitioner. Therefore she did not file any objection to the said petition. However, the petitioner never prosecuted the petition and hence the same came to be dismissed for default. The allegation of cruelty raised against the respondent are all false and therefore the petitioner is not entitled to divorce as prayed for.

4. Before the Family Court, PWs.1 to 6 were examined and

Exts.A1 to A5 were marked on the side of the petitioner/husband. No oral or documentary evidence was adduced by the respondent/wife. The Family Court on an appreciation of the oral and documentary evidence and after hearing both sides, by the impugned judgment found that the case of cruelty set up by the petitioner has not been substantiated and hence the petition has been dismissed. Aggrieved, the petitioner/husband has come up in appeal.

5. The only point that arises for consideration in this appeal is whether there is any infirmity in the findings of the Family Court calling for an interference by this Court.

6. Heard both sides.

7. The Family Court in addition to the finding that the allegation of

cruelty has not been established, held that even if there was any act of cruelty on the part of the respondent/wife, the same has been condoned by the petitioner and hence he is not entitled to the relief prayed for. Admittedly, the petitioner-husband had moved Ext.B1, i.e., O.P.No.601/2013 for restitution of conjugal rights. Ext.B1 was filed by the petitioner stating that he has condoned all the acts of cruelty committed by the respondent/wife. The petitioner when examined as PW1 admitted this fact. Thereafter in June 2014, he filed the present O.P. for divorce on the same grounds alleged in the earlier petition. PW1 admitted that after April 2013, the respondent had never resided with him. The cause of action for the present petition is the acts of cruelty alleged to have been committed by the respondent/wife till

cruelty were condoned by him and it was thereafter he had filed Ext.B1 petition for restitution of conjugal rights.

8. As per Section 13(1)(ia) of the Hindu Marriage Act, 1955 (the

Act), any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after the solemnisation of the marriage, treated the petitioner with cruelty. Section 23(1)(b) of the Act reads -

(1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that-

(a) xxx xxx xxx

(b) where the ground of the petition is the ground specified in clause

(i) of sub-section (I) of Section 10, or in Clause (I) of sub-section (1) of

Section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(bb) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) xxx xxx xxx then, and in such a case, but not otherwise, the Court shall decree such relief accordingly. (Emphasis supplied)

9. In the case on hand, the acts of cruelty of the respondent/wife

till April 2013 had been condoned by the petitioner and thereafter he had filed Ext.B1 petition for restitution. The respondent/wife states that she had never contested the matter and that she was ready to join the petitioner. But the petitioner never prosecuted and got the petition dismissed for default and it is thereafter on the same cause of action as stated in Ext.B1, he has filed the present petition. The petitioner has no explanation as to why Ext.B1 proceedings was not prosecuted. He has also no case of any act of cruelty by the respondent after April 2013. In these circumstances, by virtue of Section 23(1)(b), we find that the petitioner/husband is not entitled to the relief prayed for. The Family Court was right in dismissing the petition. We find no infirmity in the findings of the Family Court calling for an interference.

In the result, the appeal is dismissed. Sd/- AMIT RAWAL JUDGE Sd/- C.S.SUDHA JUDGE ami/ APPENDIX OF MAT.APPEAL 767/2021 PETITIONER ANNEXURES Annexure A1 CERTIFIED COPY OF THE JUDGMENT IN OP NO.140/2014 DT 23.08.2017 OF THE HON'BLE FAMILY COURT, THIRUVANANTHAPURAM Annexure A2 CERTIFIED COPY OF THE DECREE IN OP NO.140/2014 DT 23.08.2017 OF THE HON'BLE FAMILY COURT, THIRUVANANTHAPURAM Annexure A3 CERTIFIED COPY OF THE PETITION FILED BY THE APPELLANT/PETITIONER IN OP NO.140/2014 OF THE HON'BLE FAMILY COURT, THIRUVANANTHAPURAM Annexure A4 CERTIFIED COPY OF THE OBJECTION FILED BY THE RESPONDENT/RESPONDENT IN OP NO.140/2014 OF THE HON'BLE FAMILY COURT, THIRUVANANTHAPURAM

Annexure A5 CERTIFIED COPY OF THE DEPOSITION OF PW1An

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