Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4984-4985 OF 2021
[Arising out of SLP(C) Nos. 17505-17506/2019]

SIVASANKARAN .....APPELLANT

VERSUS

SANTHIMEENAL ....RESPONDENT

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. The appellant-husband and the respondent-wife resolved to tie the marital knot by solemnising their marriage as per the Hindu rites and customs on 7.2.2002. It appears there was a crash landing at the take-off stage itself! The appellant claims that the respondent's view was that she had been coerced into marrying the appellant without giving her consent, and left the marriage hall late at night and went to Pudukkottai. An endeavour by the relatives of the appellant to persuade her on the very next day to live with the appellant was not fruitful. The marriage was never consummated. As the marriage did not work out since its inception, the appellant issued a notice dated 25.02.2002 seeking divorce on the ground of

cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'). Surprisingly, the respondent filed a petition for restitution of conjugal rights soon thereafter. Respondent's case was that the appellant and his family demanded dowry and, on being unable to oblige, the appellant's brothers took him away from the Respondent's company, rendering consummation of the marriage impossible. She claims that it was the appellant who refused to cohabit with her. In these circumstances, appellant filed HMOP 24/2003 on 05.03.2003 under Section 13(1)(i-a) of the Act, which was later re-numbered as HMOP 10/2005. Post-trial, a decree of divorce was granted after almost 5 years on 17.3.2008 on the ground of irretrievable breakdown of marriage. The appellant did not waste much time and got married a second time on 23.3.2008 after 6 days. The respondent preferred an appeal before the Addl. District Judge, Pudukkottai. It is her case that she filed an appeal on 1.7.2008, within the period of limitation after obtaining all the requisite papers; but the appeal was renumbered as CMA No.5 and 7 of 2011. The appellate court set aside the decree of divorce while allowing the petition for restitution of conjugal rights. The third round took place before the High Court in second appeal and, in terms of judgment dated 14.9.2018, the decree of divorce granted by the trial court was restored. Thus, each stage of scrutiny took 5 years, and 15 years passed in the litigation. In this period, the battle between the parties continued. This *inter alia* posed a question mark on the status of the second marriage of the appellant. The matter, however, did not end at this. The respondent filed a

review petition *inter alia* on the ground that it was not within the jurisdiction of the High Court or the trial court to grant a decree of divorce on the ground of irretrievable breakdown of marriage. The High Court noticed some aspects of alleged cruelty and dissolved the marriage by passing a decree of divorce on the ground of irretrievable breakdown of marriage. Thus, the review petition was allowed by the impugned order dated 25.2.2019, which has been assailed in the present appeal.

2. The endeavour to find a solution through mediation or any acceptable solution between the parties did not succeed. According to the learned counsel for the parties, the respondent was not willing to concede the decree of divorce on any terms even though both the parties are educated and living their separate lives now for almost two decades. In fact, learned counsel for the respondent even stated that she was not disturbed by nor wanted to affect the status of the second marriage; but was unwilling to concede to a scenario where her marriage with the appellant came to an end even though in view of the financial status of the parties no maintenance was being claimed. In these circumstances, we are called upon to take a view of the matter in the given factual scenario and the subsequent developments, which are material, during the pendency of the proceedings at various stages of the judicial process.

3. We have examined the rival contentions of the parties and we have little doubt that this is one marriage which has not worked and cannot work.

This is not only on account of the fact that the appellant has married a second time but also because the parties are so troubled by each other that they are not willing to even think of living together. This, despite the fact that the respondent keeps on claiming that she is and was always willing to live with him.

4. Insofar as irretrievable breakdown of marriage is concerned, no doubt, it does not exist as a ground of divorce under the Act. The issue has been debated by the Law Commission in its various reports. Breakdown of marriage was incidentally considered by the Law Commission in its 59th report (1974), but the Commission made no specific recommendations in this regard. Thereafter in its 71st report (1978), the Law Commission departed from the fault theory of divorce to recognise situations where a marriage has completely broken down and there is no possibility of reconciliation. Neither party need individually be *at fault* for such a breakdown of the marriage – it may be the result of prolonged separation, clash of personalities, or incompatibility of the couple. As the Law Commission pithily noted, such marriages are 'merely a shell out of which the substance is gone'. For such situations, the Commission recommended that the law be amended to provide for 'irretrievable breakdown of marriage' as an additional ground of divorce. This recommendation was reiterated by the Law Commission in its 217th Report in 2010, after undertaking a *suo moto* study of the legal issues involved. So far, the Law Commission's recommendations have not been implemented. In 2010, the government introduced the Marriage Laws

(Amendment) Bill, 2010, which *inter alia* proposed to add irretrievable breakdown of marriage as a new ground for divorce in both the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. After receiving suggestions from relevant stakeholders, the bill was amended and re-introduced as the Marriage Laws (Amendment) Bill, 2013. This bill was never passed.

5. The result is that, in appropriate cases, this court has granted decrees of divorce exercising its unique jurisdiction under Article 142 of the Constitution of India, to do complete justice between the parties. Such a course is being followed in varied kinds of cases, for instance where there are *inter se* allegations between the parties, in order to put a quietus to the matter, the parties withdraw these allegations and by mutual consent, this court itself grants divorce. There are also cases where the parties accept that there is an irretrievable breakdown of marriage and themselves request for a decree of divorce. One of the more difficult situations is where, in the opinion of the court, there is irretrievable breakdown of marriage but only one of the parties is willing to acknowledge the same and accept divorce on that account, while the other side seeks to oppose it even if it means carrying on with the marriage.

6. The ground which is often taken to oppose such a decree of divorce, apart from the absence of legislative mandate, is that the very institution of marriage is distinctly understood in different countries. Under the Hindu Law, it is sacramental in character and is supposed to be an eternal union of

two people - society at large does not accept divorce, given the heightened importance of marriage as a social institution in India. Or at least, it is far more difficult for women to retain social acceptance after a decree of divorce. This, coupled with the law's failure to guarantee economic and financial security to women in the event of a breakdown of marriage; is stated to be the reason for the legislature's reluctance to introduce irretrievable breakdown as a ground for divorce – even though there may have been a change in social norms over a period of time. Not all persons come from the same social background, and having a uniform legislative enactment is thus, stated to be difficult. It is in these circumstances that this court has been exercising its jurisdiction, despite such reservations, under Article 142 of the Constitution of India.

7. A marriage is more than a seemingly simple union between two individuals. As a social institution, all marriages have legal, economic, cultural, and religious ramifications. The norms of a marriage and the varying degrees of legitimacy it may acquire are dictated by factors such as marriage and divorce laws, prevailing social norms, and religious dictates. Functionally, marriages are seen as a site for the propagation of social and cultural capital as they help in identifying kinship ties, regulating sexual behaviour, and consolidating property and social prestige. Families are arranged on the idea of a mutual expectation of support and amity which is meant to be experienced and acknowledged amongst its members. Once this amity

breaks apart, the results can be highly devastating and stigmatizing. The primary effects of such breakdown are felt especially by women, who may find it hard to guarantee the same degree of social adjustment and support that they enjoyed while they were married.

8. We may notice that the aforesaid exercise has produced different judicial thought processes which have resulted in a reference to a Constitution Bench of this Court in T.P.(C) No.1118/2014.[1] The reference is on two grounds – (a) what could be the broad parameters for exercise of powers under Article 142 of the Constitution to dissolve the marriage between consenting parties without referring the parties to the family court to wait for the period prescribed under Section 13-B of the Act, and (b) whether the exercise of such jurisdiction under Article 142 should be made at all or whether it should be left to be determined on the facts of each case.

9. In fact, this has been the bedrock of the submissions of the learned counsel for the respondent who has strongly opposed any endeavour by this court to exercise jurisdiction under Article 142 of the Constitution to give a decree of divorce on account of irretrievable breakdown of marriage in the absence of consent of the parties. However, we must note that the remit of the questions referred in TP (C) No. 1118/2014 is rather specific. The reference is limited to cases of divorce on mutual consent, and it raises the issue of whether the period prescribed under S. 13-B of the Act is mandatory. The present case involves a divorce petition filed under S. 13(1)(i-a) of the

1 Shilpa Sailesh v. Varun Sreenivasan; order dated 29.06.2016.

Act, and at no point of time have both parties been amenable to a divorce on mutual consent. Lack of consent to divorce in the present matter is also apparent from the subsequent conduct of one of the parties, as discussed later in this judgment. The case at hand is therefore, in our opinion, not covered by the questions referred to the Constitution Bench in T.P. (C) No. 1118/2014.

10. We may further note that despite the reference order dated 29.06.2016, there have been various instances where this court has exercised its powers to grant divorce in such circumstances.

11. We may initially refer to two judicial pronouncements in *R. Srinivas Kumar* v. *R. Shametha*[2] and *Munish Kakkar* v. *Nidhi Kakkar*[3] where it has been clearly opined that there is no necessity of consent by both the parties for exercise of powers under Article 142 of the Constitution of India to dissolve the marriage on the ground of irretrievable breakdown of marriage.

12. In *R. Srinivas Kumar,*[4] the parties had been living apart for 22 years and all endeavours to save the marriage had failed. We may note that in *Hitesh Bhatnagar* v. *Deepa Bhatnagar*[5], it was opined by this Court that courts can dissolve a marriage as irretrievably broken down only when it is impossible to save the marriage, all efforts have been made in that regard, the Court is convinced beyond any doubt that there is actually no chance of

2 (2019) 9 SCC 409.
3 (2020) 14 SCC 657.
4 Supra
5 (2011) 5 SCC 234.

the marriage surviving, and it is broken beyond repair. It could be useful to reproduce the observations made in para 5.2 to para 8 as under:

> **"5.2.** In *Naveen Kohli* [*Naveen Kohli* v. *Neelu Kohli*, (2006) 4 SCC 558] , a three-Judge Bench of this Court has observed as under :
>
> "*74*. … once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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.
>
> ***
>
> *85*. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. …
>
> *86*. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto."
>
> (emphasis supplied)
>
> A similar view has been expressed in *Samar Ghosh* [*Samar Ghosh* v. *Jaya Ghosh*, (2007) 4 SCC 511].

6. In the similar set of facts and circumstances of the case, this Court in *Sukhendu Das* [*Sukhendu Das* v. *Rita Mukherjee*, (2017) 9 SCC 632 : (2017) 4 SCC (Civ) 714] has directed to dissolve the marriage on the ground of irretrievable breakdown of marriage, in exercise of powers under Article 142 of the Constitution of India.

7. Now so far as submission on behalf of the respondent wife that unless there is a consent by both the parties, even in exercise of powers under Article 142 of the Constitution of India the marriage cannot be dissolved on the ground of irretrievable breakdown of marriage is concerned, the aforesaid has no substance. If both the parties to the marriage agree for separation permanently and/or consent for divorce, in that case, certainly both the parties can move the competent court for a decree of divorce by mutual consent. Only in a case where one of the parties do not agree and give consent, only then the powers under Article 142 of the Constitution of India are required to be invoked to do substantial justice between the parties, considering the facts and circumstances of the case. However, at the same time, the interest of the wife is also required to be protected financially so that she may not have to suffer financially in future and she may not have to depend upon others.

8. This Court, in a series of judgments, has exercised its inherent powers under Article 142 of the Constitution of India for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted. In the present case, admittedly, the appellant husband and the respondent wife have been living separately for

more than 22 years and it will not be possible for the parties to live together. Therefore, we are of the opinion that while protecting the interest of the respondent wife to compensate her by way of lump sum permanent alimony, this is a fit case to exercise the powers under Article 142 of the Constitution of India and to dissolve the marriage between the parties."

13. In *Munish Kakkar case*[6], the following observations were made:

"19. We may note that in a recent judgment of this Court, in R. Srinivas Kumar v. R. Shametha, to which one of us (Sanjay Kishan Kaul, J.) is a party, divorce was granted on the ground of irretrievable breakdown of marriage, after examining various judicial pronouncements. It has been noted that such powers are exercised not in routine, but in rare cases, in view of the absence of legislation in this behalf, where it is found that a marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably. That was a case where parties had been living apart for the last twenty-two (22) years and a re-union was found to be impossible. We are conscious of the fact that this Court has also extended caution from time to time on this aspect, apart from noticing 1(2019) 9 SCC 409 10 that it is only this Court which can do so, in exercise of its powers under Article 142 of the Constitution of India. If parties agree, they can always go back to the trial court for a motion by mutual consent, or this Court has exercised jurisdiction at times to put the matter at rest quickly. But that has not been the only circumstance in which a decree of divorce has been granted by this Court. In numerous cases, where a marriage is found to be a dead letter, the Court has exercised its extraordinary power under Article 142 of the Constitution of India to bring an end to it.

20. We do believe that not only is the continuity of this marriage fruitless, but it is causing further emotional trauma and disturbance to both the

6 supra

> parties. This is even reflected in the manner of responses of the parties in the Court. The sooner this comes to an end, the better it would be, for both the parties. Our only hope is that with the end of these proceedings, which culminate in divorce between the parties, the two sides would see the senselessness of continuing other legal proceedings and make an endeavour to even bring those to an end.
>
> 21. The provisions of Article 142 of the Constitution provide a unique power to the Supreme Court, to do "complete justice" between the parties, i.e., where at times law or statute may not provide a remedy, the Court can extend itself to put a quietus to a dispute in a manner which would befit the facts of the case. It is with this objective that we find it appropriate to take recourse to this provision in the present case.
>
> 22. We are of the view that an end to this marriage would permit the parties to go their own way in life after having spent two decades battling each other, and there can always be hope, even at this age, for a better life, if not together, separately. We, thus, exercising our jurisdiction under Article 142 of the Constitution of India, grant a decree of divorce and dissolve the marriage inter se the parties forthwith."

The aforesaid are two illustrative cases but there are many more spread over different periods of time.[7]

14. We are conscious that the Constitution Bench is examining the larger issue but that reference has been pending for the last five years. Living together is not a compulsory exercise. But marriage is a tie between two parties. If this tie is not working under any circumstances, we see no purpose in postponing the inevitability of the situation merely because of the pendency of the reference.

---

7 Sukhendu Das v. Rita Mukherjee (2017) 9 SCC 632; Parveen Mehta v. Inderjit Mehta (2002) 5 SCC 706.

15. However, the aforesaid is not the only issue under which the given facts of a case can be examined. No doubt, the courts below did not find adequate material to come to the conclusion that the appellant was entitled to divorce on grounds of cruelty. However, there are many subsequent circumstances which have arisen in the present case which necessitated the examination of this aspect. The question, thus, is whether the respondent's conduct after the initial trigger for divorce amounts to mental cruelty. On the basis of material on record, we endeavour to deal with this aspect and, in that behalf, we notice the following:

(a) The respondent has resorted to filing multiple cases in courts against the appellant. It may be noticed that such repeated filing of cases itself has been held in judicial pronouncements to amount to mental cruelty.[8]

(b) Respondent filed W.P. No.20407/2013 praying for a writ of mandamus to initiate disciplinary action against the appellant, who was working as an Asst. Professor in the Department of History in Government Arts College, Karur. This writ petition was dismissed on 6.6.2019.

(c) The respondent sought some information from the College vide an RTI application dated 3.6.2013. She claimed the information received from the college was insufficient and filed an appeal. She sought the service records pertaining to the appellant, apart from other documents such as the identity card issued to the appellant under the Star Health Insurance Scheme and

8 K. Srinivas Rao v. DA Deepa (2013) 5 SCC 226; Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558; Vishwanath Agrawal v. Sarla Vishwanath Agrawal (2012) SCCOnline SC 489.

prior permission obtained by the appellant for purchasing a piece of property owned by the Tamil Nadu Housing Board etc.

(d) The respondent thereafter filed Writ Petition No. 9516/2014. Even the information already furnished to her was again sought for. The Madras High Court opined, in terms of the judgment dated 3.3.2016, that the respondent had raised unnecessary queries. Her queries sought information about her husband's remarriage or whether he was living with somebody else, well known to her, and the proceedings were found to be an abuse of the process of the RTI Act.

(e) The respondent made representations to the college authorities seeking initiation of disciplinary proceedings against the appellant. It was not confined to even those college authorities, but she made representations even to the Director of Collegiate Education and the Secretary, Department of Higher Education (Tamil Nadu). She sought disciplinary proceedings against the appellant on account of the second marriage despite the fact that the second marriage took place soon after the decree of divorce. Thus, she sought to somehow ensure that the appellant loses his job. Filing of such complaints seeking removal of one's spouse from job has been opined as amounting to mental cruelty.[9]

16. On having succeeded before the first appellate court, the respondent lodged a criminal complaint against the appellant under Section 494 IPC even though her appeal was pending before the High Court. She sought to

9 *K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226.

array and accuse even the persons who had attended the second marriage. The High Court quashed the criminal proceedings in terms of order dated 18.2.2019.

17. There are episodes of further harassment by the respondent even at the place of work of the appellant including insulting the appellant in front of students and professors, as is apparent from the judgment of the Trial Court. She is stated to have threatened the appellant of physical harm in front of his colleagues as per the testimony of PW.3 and complained to the appellant's employer threatening to file a criminal complaint against him (PW.3). The first appellate court somehow brushed aside these incidents as having not been fully established on a perception of wear and tear of marriage. The moot point is that the marriage has not taken off from its inception. There can hardly be any 'wear and tear of marriage' where parties have not been living together for a long period of time. The parties, undisputedly, never lived together even for a day.

18. We are, thus, faced with a marriage which never took off from the first day. The marriage was never consummated and the parties have been living separately from the date of marriage for almost 20 years. The appellant remarried after 6 years of the marriage, 5 years of which were spent in Trial Court proceedings. The marriage took place soon after the decree of divorce was granted. All mediation efforts have failed.

19. In view of the legal position which we have referred to aforesaid, these continuing acts of the respondent would amount to cruelty even if the same had not arisen as a cause prior to the institution of the petition, as was found by the Trial Court. This conduct shows disintegration of marital unity and thus disintegration of the marriage.[10] In fact, there was no initial integration itself which would allow disintegration afterwards. The fact that there have been continued allegations and litigative proceedings and that can amount to cruelty is an aspect taken note of by this court.[11] The marriage having not taken off from its inception and 5 years having been spent in the Trial Court, it is difficult to accept that the marriage soon after the decree of divorce, within 6 days, *albeit* 6 years after the initial inception of marriage, amounts to conduct which can be held against the appellant.

20. In the conspectus of all the aforesaid facts, this is one case where both the ground of irretrievable breakdown of marriage and the ground of cruelty on account of subsequent facts would favour the grant of decree of divorce in favour of the appellant.

21. We are, thus, of the view that a decree of divorce dissolving the marriage between the parties be passed not only in exercise of powers under Article 142 of the Constitution of India on account of irretrievable breakdown of marriage, but also on account of cruelty under Section 13(1)(i-a) of the Act

10 *A. Jayachandra* v. *Aneel Kaur*, (2005) 2 SCC 22
11 *Malathi Ravi* v. *B.V. Ravi,* (2014) 7 SCC 640

in light of the subsequent conduct of the respondent during the pendency of judicial proceedings at various stages.

22. The decree of divorce is, accordingly, passed. Marriage stands dissolved.

23. The appeals are allowed in the aforesaid terms leaving the parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[HRISHIKESH ROY]

NEW DELHI.
September 13, 2021