

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF OCTOBER , 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

**M.F.A.No.10837/2013 (FC)**

BETWEEN:

SANTHOSH  
S/O UPENDRA  
AGED 40 YEARS  
RESIDING AT KUDUPU  
MANDARA HOUSE  
POST DUDUPU  
MANGALORE TALUK.

... APPELLANT

(BY SMT. REKHA DAISY LOBO, ADV., FOR  
SRI CYRIL PRASAD PAIS, ADV.)

AND:

SMT. KAVITHA  
W/O SANTHOSH  
D/O MOHAN  
AGED 32 YEARS  
RESIDING AT DOOR  
NO.22.11.1493  
SUDAMA, AUSHADASHALE  
BOLAR, MANGALORE.

... RESPONDENT

(RESPONDENTS - SERVED AND UNREPRESENTED)

THIS M.F.A. IS FILED UNDER SECTION 19(1) F.C ACT  
READE SECTION 28 OF THE HINDU MARRIAGE ACT, 1955,  
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED  
30.10.2013 PASSED BY THE PRINCIPAL JUDGE, FAMILY  
COURT, MANGALORE, DAKSHINA KANNADA DISTRICT, IN

M.C.NO.27/2012 AND CONSEQUENTLY ALLOW THE PETITION FILED BY THE PETITIONER UNDER SEC. 13(1)(I)(I-A) OF THE HINDU MARRIAGE ACT, 1955 AS PRAYED FOR BEFORE THE TRIAL COURT.

THIS APPEAL COMING ON FOR HEARING, THIS DAY, **VISHWAJITH SHETTY J.**, DELIVERED THE FOLLOWING:

### **J U D G M E N T**

This miscellaneous first appeal is filed under Section 19 of the Family Courts Act assailing the judgment and decree dated 30.10.2013 passed by the Family Court, Dakshina Kannada, Mangaluru in M.C.No.27/2019 wherein the petition filed by the appellant/husband under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act of 1955') seeking dissolution of his marriage with the respondent that was solemnized on 11.01.2016 at Lions Seva Mandir, Mallikatte, Mangaluru was dismissed.

2. Heard the learned counsel appearing for the appellant and also perused the material available on record.

3. The respondent, though served in the matter has remained absent.

4. Facts leading to filing of this appeal narrated in brief are, the marriage of the appellant and the respondent was solemnized on 11.01.2006 at Lions Seva Mandir, Mallikatte as per the rites and customs prevailed in their community. After the marriage, the behaviour of the respondent was allegedly abnormal and she often used to go to her parents house without informing the appellant or his parents. Subsequently, the appellant came to know that the respondent had illegitimate relationship with one Dinesh, who is resident of Benjanapadav, Mangaluru Taluk and she was residing with him. It is under this circumstance, the appellant had lodged a complaint before the jurisdictional Police Station. It appears that thereafter at intervention of the police, the respondent was brought back to the house of the appellant. However, even thereafter, she continued her relationship with the aforesaid Dinesh. The appellant thereafter went to Kuwait on employment and during the said period, the respondent-wife was staying with her boyfriend. After the appellant returned from Kuwait, he had once again lodged the police complaint before the Kadri Police Station, who had summoned the respondent

to the police station and advised the parties to serve their marital tie and accordingly, an agreement dated 14.10.2010 was executed between the appellant and the respondent agreeing to reside separately and sum of Rs.35,000/- was also paid by the appellant to the respondent under the said agreement. The respondent had also taken all her belongings including gold ornaments and other valuables from the appellant's house and in respect of the same, the mahazar was also signed by the respondent and her relatives. However, thereafter the respondent allegedly did not cooperate with the appellant for filing a mutual consent divorce petition and it is under these circumstances, the appellant had approached the Family Court, Mangaluru by filing a petition under Section 13(1)(i-a) of the Act of 1955 seeking dissolution of marriage. The respondent had entered appearance in the said proceedings and filed her statement of objections denying the petition averments. Before the Family Court, the appellant had examined himself as P.W.1 and three other witnesses were examined as PWs.2 to 4 and 14 documents were marked as Ex.P1 to P14 whereas the respondent

examined herself of R.W.1 and no documents were marked on behalf of the respondent.

5. The Family Court vide the impugned judgment and decree had dismissed the petition filed by the appellant and being aggrieved by the same, he has preferred this appeal.

6. The learned counsel for the appellant submits that the respondent who is served in this appeal has remained absent. She submits that the parties are residing separately ever since from the year 2010. She also submits that having regard to the conduct of the respondent, which is evident from Ex.P2-complaint lodged by the appellant before the jurisdictional police station, it is very clear that the respondent was leading a unethical life even after the marriage and therefore, the same would amount to cruelty within the meaning of Section 13(1)(i-a) of the Act of 1955 for the purpose of dissolution of marriage. She has relied upon the judgment of the Hon'ble Supreme Court in the case of

**VISHWANATH AGRAWAL VS. SARLA VISHWANATH**

**AGRAWAL**<sup>1</sup>in support of his contention.

7. We have given our anxious consideration to the arguments addressed on behalf of the appellant.

8. The appellant has alleged in the petition in detail about the illegitimate relationship that the respondent had with her boyfriend even after her marriage was solemnized with the appellant. Even before the Family Court, he has reiterated the averments made by him in his petition and nothing has been elicited from him during the course of his cross-examination to disbelieve the said contention. In addition to the said averments made by him he has also produced Ex.P.2- police complaint which was lodged by him alleging that the respondent was living with her boyfriend namely Dinesh even after marriage and he has also produced mahazar which was drawn subsequent to the said complaint to show that the respondent had taken back all her belongings from him and had left the matrimonial house. He has also produced the agreement which was

---

<sup>1</sup> (2012) 7 SCC 288

executed between the parties on 14.10.2010 which is produced as Ex.P9.

9. The Family Court, Mangaluru has dismissed the petition disbelieving the evidence of the appellant on the ground he has not produced the material evidence in support of his contention. The Hon'ble Supreme Court in the case of **PARVEEN MEHTA V. INDERJIT MEHTA**<sup>2</sup> has held that *mental cruelty is state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. The facts and the circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other.*

10. In the present case, the appellant has averred in detail about the illegitimate relationship of the

---

<sup>2</sup> (2002) 5 SCC 706

respondent with her boyfriend which she carried on even after her marriage with the appellant. In this regard a police complaint has also been lodged by the appellant and immediately after the police complaint, the respondent-wife has collected all her valuables from the appellant and has left his house. Thereafter, agreement was also executed between the parties wherein the couple had agreed to live separately. The respondent - wife who has been served in the matter has not appeared before this Court and therefore, an adverse inference could be drawn against her.

11. Further, the parties are residing separately for the last more than 12 years. The Hon'ble Supreme Court in the case of **SAMAR GHOSH VS. JAYA GHOSH**<sup>3</sup> has observed 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*

---

<sup>3</sup> (2007) 4 SCC 511



*scant regard for the feelings and emotions of the parties.  
In such like situations, it may lead to mental cruelty.*

12. In the case of **VISHWANATH AGRAWAL** (supra) the expression "*Cruelty*" has an inseparable nexus with human conduct and is always dependent on social strata. The word "Cruelty" for the purpose of Section 13(1)(i-a) of the Act of 1955 has not been defined. Cruelty would be mental or physical or both and the same has to be inferred from the material evidence placed by the parties before the Court.

13. Having regard to the averments made in the petition which has been reiterated by the appellant during the course of his examination before the Family Court and also considering the documents produced in support of the contention raised by him, we are of the considered opinion that the Family Court was not justified in dismissing the petition filed by the appellant for dissolution of marriage under Section 13(1)(i-a) of the Act of 1955. Accordingly, the following :-

**::ORDER::**

Miscellaneous First Appeal is allowed.

The judgment and decree passed by the Family Court, Dakshina Kannada, Mangaluru is set aside. The marriage of the appellant with the respondent solemnized on 11.01.2016 at Lions Seva Mandir, Mallikatte, Mangaluru, Dakshina Kannada District is hereby dissolved.

**SD/-  
JUDGE**

**SD/-  
JUDGE**

NMS