

(2013) 11 KAR CK 0207
In the Karnataka High Court
Case No : M.F.A. No. 3250 of 2013

Sri R. Ramachandraiah

APPELLANT

Vs

Smt. R. Usha

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)(ia)
Limitation Act, 1963 — Section 5

Citation : (2013) 11 KAR CK 0207

Hon'ble Judges : K.L. Manjunath, J;A.V. Chandrashekara, J

Bench : Division Bench

Advocate : B. Sharath Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—This is an appeal filed by the petitioner of M.C. No. 3538/2011 which was pending on the file of the Court of Principal Judge, Family Court, Bangalore. The appellant had filed a petition seeking divorce on the ground of cruelty u/s 13(1)(ia) of Hindu Marriage Act, against his wife, who is the respondent herein and the said petition has been dismissed after contest vide order dated 05.01.2013. It is this order which is called in question on various grounds. There is a delay of 50 days in filing the appeal. Hence an application is filed u/s 5 of the Limitation Act, 1963, to condone the delay and substantial cause is shown in the affidavit sworn to that effect. Hence we are satisfied about the same and the delay being very marginal is to be condoned and accordingly condoned by allowing I.A.I. of 2013.

2. Then we have heard the learned Counsel for the appellant regarding admission.

3. The marriage of the appellant herein was solemnized on 22.05.1993 in a Kalyana Mantapa of Chamarajpet, Bangalore, as per the Hindu rites. After the marriage, both of them started residing along with the family members of the petitioner. Parties to this appeal have four male children and they have attained

majority. They are residing with the respondent.

4. The grievance of the petitioner is that the respondent was rude and impolite and she did not show any respect to his parents. Right from day one, she did not want his parents to live with them and she would always make some complaint or the other. She used to return to home late in the night and keep herself locked in the room for long hours. Whenever he questioned her about the same, she used to abuse him and threaten to lodge complaint against him. In the year 1989 serious disputes arose between them and since then they started living separately. But due to the intervention of his parents they started living together. The petitioner is stated to have purchased valuable properties out of the income earned from silk business and they are worth several crores. He is stated to have provided good education to his sons, but they have become adamant and they are addicted to lavish lifestyle.

5. The respondent has been working as Manager of Apex Bank. The petitioner objected to the engagement in connection with the marriage of his first two sons. She colluded with them and started giving all sorts of troubles to him. As a result of humiliation and cruelty, he had to issue a legal notice on 08.09.2011. Thereafter he received an untenable reply from the respondent and as such he chose to file the petition seeking divorce.

6. The respondent appeared before the Trial Court and. had chosen to file detailed objections denying all the material averments. According to him, the petitioner had chosen to file a false complaint against her and her sons in PCR No. 25959/2011 before VI Addl. CMM, Bangalore. In the said case, the learned Magistrate has passed an order referring the same to the jurisdictional police. The purpose of filing the said complaint was to stop the marriage of her eldest son. She has denied the allegations of cruelty and harassment attributed to the petitioner.

7. The petitioner himself has been examined as P.W.1 and has got marked seven exhibits. The respondent has been examined as RW1. She has got marked two exhibits. After hearing the arguments, the learned Judge has chosen to frame the following point for consideration

Whether the petitioner proves that the respondent subjected him to cruelty and ill treatment in the matrimonial home within the meaning of Sec. 13(1)(ia) of the Hindu Marriage Act?

and has ultimately dismissed the petition. It is this petition which is called in question on various grounds as set out in the appeal memo.

8. We have heard the learned Counsel for the appellant and we have perused the grounds of the appeal. The point that arises for our consideration at this stage is: "Whether there are any good grounds to admit this appeal?"

REASONS

9. It is an admitted fact that all the sons of the parties have attained majority. The eldest son completed his degree in 2006 and thereafter he joined ICWA. Out of the funds provided by the respondent, the petitioner purchased 10 acres of land at Lakkur. Virtually the petitioner and the respondent were talking to each other and were almost in cordial terms till March 2011, during which time they were living in house bearing No. 12, Anjenayappa Temple Street, Cubbonpet, Bangalore. There were no serious matrimonial disputes between them. The allegation made in the petition about cruelty are all minor and trivial. They are general allegations. Actually the differences arose between the parties only on account of marriage of their first son. The first son did not marry a girl of the same community and this was objected to by the petitioner. It is evident that the appellant did not even attend the marriage and does not know anything about the marriage. The compliant filed by him has ended in "B" report as per Ex.P7. On a bare reading of the allegations made in the petition and the answers elicited from his mouth during the course of oral evidence, it is clear that there was no serious disputes between them until the marriage of their eldest son. He did not like his son to marry an orphan girl. The marriage was performed against his consent. Just because the respondent has sided with her son in regard to the marriage, the petitioner chose to file a petition on the ground of cruelty.

10. As rightly pointed out by the learned Judge, the allegation of cruelty requires a higher degree of proof and the appellant is required to establish all the facts and circumstances constituting cruelty which render it impossible for the parties to live together as husband and wife. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and psychological changes in the spouses. Trivial matters should not be blown out of proportion to dissolve the marriage.

11. We do not find any reason to come to the conclusion that there was reasonable apprehension for appellant that it would be either harmful or injurious if he were to live with the respondent.

12. On going through the impugned order, we are of the considered opinion that absolutely no evidence is placed before the Trial Court in regard to the aspect of cruelty. There are no grounds to dissolve the marriage by way of divorce. Hence, we are of the opinion that the case on hand is not fit for admission and is liable to be dismissed at the threshold.

ORDER

Appeal filed u/s 19 of the Family Courts Act, challenging the order passed in M.C. No. 3538/2011 on the file of the Principal Judge, Family Court, Bangalore, is dismissed at the stage of admission itself. We pass no order as to costs.