

**SUPREME COURT OF INDIA**

C.Sembiam Sivakumar

Vs.

V.Sivachitra Devi

C.A.No.7223-7224 of 2015

(Kurian Joseph and Amitava Roy,JJ.,)

15.09.2015

**JUDGMENT**

**Kurian Joseph,J.,**

SLP (Civil) No.31056-31057 of 2012

1. Leave granted.

2. The appellant has come up in appeal by special leave, aggrieved by the judgment dated 19.06.2012 in Civil Miscellaneous Appeal No.220/2003 on the file of the High Court of Judicature at Madras. The High Court set aside the decree of divorce granted by order dated 19.11.2002 in F.C.O.P. No.1569 / 1998 of the Family Court, Madras. The said order was passed by the Family Court in a petition filed by the appellant for dissolution of marriage on the ground of cruelty, under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. According to the appellant, the marriage was solemnized on 13.11.1997 as per customary rites. It was an arranged marriage. It is the case of the husband that the marriage was never consummated and the respondent was not interested in marital life. It is alleged that respondent left the company of the appellant on 27.01.1998; however, according to the respondent, she left appellant's company on 10.03.1998. Though, the petition for dissolution was filed in 1998 it was disposed of by the Family Court only in the year 2002. Having regard to the evidence available on record, the Family Court was of the view that the appellant was entitled to the decree of divorce on the ground of cruelty.

3. In appeal, the High Court, however, came to the conclusion that the evidence available on record was not sufficient to establish cruelty so as to grant a decree of divorce and hence the order of decree of divorce granted by the Family Court was set aside. When the matter came up before this Court on 30.10.2012, this Court passed the following order:-

"Learned counsel for the petitioner submitted that after passing of the decree of divorce by the trial Court his client had remarried and it will cause him immense injury if the impugned judgment of the High Court is not set aside. He also pointed

out that during the pendency of the matter before the High Court, the respondent had agreed to accept permanent alimony of rupees four lacs. In reply to the Court's query, learned counsel submitted that his client is still ready and willing to pay the amount of permanent alimony with little enhancement. Issue notice to the respondent, returnable in the first week of February, 2013. Dasti, in addition, is permitted. Issue notice on the petitioner's prayer for interim relief, returnable in the first week of February, 2013. Dasti, in addition, is permitted. In the meanwhile, operation of the impugned judgment shall remain stayed subject to the condition that within eight weeks from today the petitioner shall pay to the respondent a sum of rupees five lacs. If the needful is not done, the interim order passed today shall stand automatically vacated and the special leave petition shall stand dismissed. The Registry shall issue notice to the respondent only after the petitioner produces evidence showing payment of rupees five lacs to her."

4. On 26.09.2014, the matter again came up and Court passed a further order which reads as under:-

"Learned counsel for the petitioner submits that a sum of Rs.5 Lacs has been paid in favour of the respondent (wife). On joint request of the learned counsel for the parties, we refer the matter to the Co-ordinator, Supreme Court Mediation Centre at 110, Lawyers' Chambers (R.K. Jain Block), Supreme Court Compound, Tilak Marg, New Delhi-110001. The parties to appear before the Mediator on 16th October, 2014 at 11.00 A.M. Let the Mediator examine all the option to resolve the dispute amicably. Report may be submitted within six weeks from the date of appearance. Post the matter after ten weeks. In the meantime, petitioner shall pay a sum of Rs.30,000/- in favour of the respondent(wife) towards her to and fro journey and stay at Delhi."

5. It is informed by learned counsel for the appellant that proceedings before the Mediator did not take place since it was informed by the respondent that she was not willing for any mediation.

6. Thereafter, on 16.01.2015, this Court passed the following order:-

"Learned counsel for the petitioner and respondent are directed to find out whether there is a possibility between the parties to settle the dispute. We direct respondent - Ms. V.Sivachitra Devi and petitioner - Mr. C. Sembiam Sivakumar to appear before this Court on 10th February, 2015 at 1.30p.m. in Chambers. List the matter on 10th February, 2015 at 1.30p.m. in Chambers."

7. It appears that the respondent was not willing for that course of action either. On 17.02.2015, this Court hence passed the following order:-

"Pursuant to the court order dated 16.01.2015 the petitioner-Mr. C. Sembiam Sivakumar is present. Respondent-Mrs. V. Sivachitra Devi is not present. Mr. Sureshan P, Advocate-on-Record for respondent-Mrs. V. Sivachitra Devi has filed an

application seeking leave of this Court to discharge himself from the matter since he did not receive any instructions from his client being respondent. The prayer made in the application is allowed. Further, as we find that the respondent is not interested to settle the dispute amicably, we re-call the order dated 16.01.2015 and direct to list the case before an appropriate Bench on 24.03.2015."

8. After discharge of the Advocate-on-record, notice was sent to the respondent and yet she did not appear on 02.07.2015. However, the Court was inclined to grant one more opportunity and the case was adjourned. When the matter is taken up today, neither the respondent is present nor any representation is there on her behalf.

9. Having regard to the background of the litigation before this Court, it is fairly clear that the respondent is not interested to prosecute the matter any further, perhaps, because she has already received Rs.5 lakhs by way of permanent alimony pursuant to the order passed by this Court and as recorded in the order dated 26.09.2014. It is seen from the record that there was an earlier attempt when the matter was pending before the High Court, to have the matter settled on payment of permanent alimony to the tune of Rs.4 lakhs. Be that as it may. Now that, that the appellant is since remarried for more than a decade back, pursuant to the decree of divorce granted by the Family Court and since the respondent has accepted the amount of Rs.5 lakhs offered by the appellant/husband towards permanent alimony and since the appellant submits that he does not want to prosecute any litigation for recovery of gold jewellery and other articles worth more than Rs.5 lakhs, we do not think that there is any fruitful purpose in keeping this matter pending. For all practical purposes, there is no matrimonial bond between the parties. On scanning the evidence, in the light of the conduct of the respondent, we are satisfied that ground of cruelty has been made out. In that view of the matter, we set aside the impugned order passed by the High Court and restore decree of divorce granted by the Family Court. The appeals are allowed. No costs.