

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

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Introduction

The landmark judgment of K Srinivas Rao v. D A Deepa played a vital role in establishing jurisprudence with respect to mediation and highlights the importance and the need for mediation now more than ever considering the rising divorce rates in the country. The bench that gave the decision was composed of Justice Aftab Alam and Justice Ranjana Prakash Desai. The court issued two important directions in the light of Section 9 of the Family Courts Act and Section 498-A of the Indian Penal Code and urged the Courts to take these matters after an attempt at the mediation center is made.

Background

The husband was employed as an Assistant Registrar in the Andhra Pradesh High Court. The petitioner and the respondent got married in 1999 but soon separated due to disputes between the two families. The wife lodged a dowry harassment complaint in the women's protection cell against her husband and his family. The wife also filed for a restitution of conjugal rights. The husband filed a counterclaim seeking divorce on the grounds of cruelty and desertion under Section 13(1) (i-a) and (b) of the Hindu Marriage Act of 1955.

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The court upon examination observed that the wife stayed in the matrimonial house only for a day and therefore any oral submissions made by the wife regarding the matter would not be considered as evidence to support the claim. This leads to the complaint being a false one since the husband did not commit any crime under section 498A of the Indian Penal Code. Since the complaint was filed in the office where the husband was employed, this amounted to cruelty, and the reunion was removed as a possibility. The Court only ordered the husband to pay the money given by the father-in-law along with the interest from the date of the marriage till the payment is done. The court also observed that the complaints of harassment and cruelty do not hold validity since they have been living separately for a long time. The complaint of cruelty is mostly speculation and is based on assumptions and presumptions. The various false complaints filed by the wife on the husband impacted his job and the livelihoods of the other family members and this amounts to mental cruelty and therefore the marriage had to be dissolved.

The Andhra Pradesh High Court passed the judgment granting divorce to Mr. Srinivas Rao and Mrs. Deepa. The husband, aggrieved by this decision, filed a special leave petition in the Supreme Court praying the court to set aside the order.

Issues

1. If cruelty is committed by either of the parties?
2. Was there a better mechanism for resolving the issue?

Arguments Advanced

The counsel for the respondent raised the question regarding the Eighty thousand rupees and fifteen tholas of gold which was given to the husband as dowry. The husband allegedly demanded an additional ten lakh rupees. They mistreated the wife since this demand was not met by the wife's family. Since the husband did not budge from the various efforts made by the wife's family, they lodged a complaint against the husband and his family under section 498-A of the Indian Penal Code. The wife wanted to resume her married life and therefore filed for restitution of conjugal

rights decree before the court which was declined by the family court. The High Court set aside the decree for divorce and granted the decree for restitution of conjugal rights.

As per Section 13(1) (i-a) of the Hindu Marriage Act of 1955, a petition submitted either by the wife or the husband establishing the ground that the other party is treating the individual with cruelty results in the dissolution of the marriage by a decree of divorce. In numerous precedents, the court has provided a wider interpretation of the term ‘cruelty’. The act speaks for itself when one partner has harbored ill feelings or has presented themselves to be harmful or injurious to the life of the other person. The court has not tightly compartmentalized the concept of cruelty. It is accepted that cruelty can be physical or mental and detrimental to marital bliss in both cases. The court in the case of *Samar Ghosh v. Jaya Ghosh*¹ laid down that cruelty has to be determined based on the facts of the case and it is unjust to tightly compartmentalize. The court has gone to lengths to explain the various instances where cruelty can be faced by the parties from the other person. The court laid great emphasis on the case of *Naveen Kohli v. Neelu Kohli*² in which the husband and wife lived apart for sixteen and a half years which is an extremely long period and therefore arrived at the conclusion that the marriage was beyond repair, and this was all due to the mental agony caused by the wife.

The court looked at the possibility of an amicable settlement of the dispute. Since the majority of the problem arose when both husband and wife separated, there was only one attempt at amicable settlement of the matter by the respondent’s father. The matter escalated when the wife lodged a complaint against the husband. During cross-examination, it came to light that the complaint was lodged due to the anger and frustration of the wife without any incidents occurring. The complaint increased the gap between the husband and wife and divided them indefinitely.

The court was of the opinion that not granting a decree of divorce to these two individuals may also lead to mental cruelty just on the contention that they have not lived together since marriage. The counsel’s argument that the marriage has been inevitably destroyed and that too beyond the

¹ (2007) 4 SCC 511

² (2006) 4 SCC 558.

point of reparation is also not a ground for granting the decree of divorce under the Hindu Marriage Act of 1955. But the reason for this bitterness in marriage has occurred as a result of the actions of both the husband and the wife. Marriage has to involve human emotions and forcefully bringing them together organically will be imposing further cruelty on these parties instead of having any positive repercussions.

Judgement

Considering the pertinence of the husband and the wife living apart for more than sixteen and half years the court concluded that the marriage was ruptured beyond repair and this contention was laid down in Naveen Kohli v. Neelu Kohli where the wife published an advertisement in the national newspaper that the husband was her employee which affected his business since the business associates avoided dealing with him. After reviewing the legal proceedings initiated by both parties and the numerous complaints filed against each other, the court concluded that the marriage was beyond repair.

The Hon'ble High Court has erred on cruelty being a deciding factor when the husband and wife did not even live under the same roof. Spouses can cause cruelty even without living under the same roof through actions such as filing false complaints and causing damage to their reputation.

Mediation: The Way Forward

The adjudicators for the case were of the opinion that the decree of divorce is granted too easily for a dispute that arose out of misunderstandings and having different priorities and interests. The court observed that the wife was completely dependent on the husband financially and a permanent alimony was granted after the decree of divorce was passed. The court stressed the importance of the interests of the parties in matters of a matrimonial dispute. Even though the respondent claimed to have faced cruelty because of her husband, the court observed that the incident was mentally challenging to the husband as well.

The learned judge observed that there was an alarming need for the intervention of a ‘neutral third party’ and the dispute has at least an ounce of being resolved. If the parties were directed to approach a mediation center and had undergone a pre-litigation mediation, then there was an opportunity for the matter to be resolved. There were instances where both the husband and the wife wanted to stay in the marriage and could not overcome the blocks by themselves. If the third party had directed them in the right direction, then their marriage might not have disintegrated. The court was of the opinion that in most matrimonial dispute cases, the problem at hand would be linear and solvable. Therefore, mediation has to be seen as a way forward here onwards. The legal recognition given to mediation has to be taken advantage of and should be utilized for better resolving of issues. Section 9 of the Family Courts Act must be read in line while addressing matrimonial disputes. After the councilors have given their opinion, the matters have to be moved to mediation centers for better resolving of the issues. Pre-litigation mediation should also be a procedure to help resolve the issues. In the case of Ramgopal and Anr. v. State of Madhya Pradesh³, the court directed that complaints filed for compoundable offenses have to be resolved in mediation centers. A similar notion was held in the case of G V Rao v. L H V Prasad and Ors⁴. The court through this judgment issued directions in the light of Section 9 of the Family Court Act.

The Family Courts will mandatorily have to make efforts to solve matrimonial disputes through mediation even if the Counsellor fails to file a report. This mediation will occur within a reasonable time frame to ensure that the resolution by the Family Court is not delayed.

Conclusion

The directions provided by the Apex Court in this judgment opened a hemisphere for mechanisms to resolve the disputes. The advantages of mediation are numerous, importantly, it is party-specific, where the parties get to decide on the terms on which they would like to move forward. Considering the present divorce rates, mediation is going to be a revolutionizing arena with respect

³ (2010) 13 SCC 540

⁴ (2000) 3 SCC 693

to matrimonial disputes in the years to come and will tremendously assist the family courts in cutting down the burden.