

Chananmal Vs. Bimla

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Court : Rajasthan Jodhpur

Decided On : Nov-28-2013

Appellant : Chananmal

Respondent : Bimla

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

JUDGMENT

: S.B. CIVIL MISC. APPEAL NO.394/2000 Chananmal Vs. Bimla Date of Judgment ::

28. h November, 2013 PRESENT HON'BLE MR. JUSTICE ARUN BHANSALI Mr. Nitin Trivedi, for the appellant. Mr. Sunil Beniwal, for the respondent. ---- BY THE COURT: This appeal under Section 28 of the Hindu Marriage Act, 1955 ('the Act') is directed against judgment and decree dated 27.05.2000 passed by the Additional District Judge, Nohar, District Hanumangarh, whereby, the petition presented by the appellant seeking dissolution of marriage by a decree of divorce has been rejected. Brief facts of the case may be noticed thus: the appellant-petitioner filed a petition under Section 13 of the Act without specifying any clause of the said section, inter alia, with the averments that marriage between the parties was solemnized on 14.07.1978 and, on the next day of the marriage, which was solemnized at her village, she came to her in-laws' place and started performing her matrimonial obligations; it was alleged that respondent Bimla was freelance by

nature and would visit her parents' place without seeking permission from the petitioner 2 and at her own sweet will and whenever she was told not to do so, she would start quarrelling; efforts were made by the petitioner to make her understand; her behaviour was quite disturbing and started affecting petitioner's reputation in the society; six years prior to filing of the petition (filed on 30.10.1992) efforts were made to make the respondent understand, however, her brother Ram Singh started quarrelling and refused to send the respondent to the matrimonial home; it was further alleged that respondent was staying at her parents' home for last six years on her own volition and they have no child; on account of respondent's said behaviour and freelance nature, she was not staying with the petitioner, which has resulted in mental shock to him and he is being deprived of his marital rights and his reputation in the society has been affected. Ultimately, it was prayed that the marriage solemnized between the parties be dissolved by a decree of divorce. The respondent-wife filed her written statement to the petition; it was, inter alia, submitted that the respondent was a uneducated lady of rural background. Allegations about freelance nature and visiting her parents' home without permission were denied and it was alleged that the said averments have been made merely to create ground for the petition; in fact, the respondent performed her matrimonial obligations with the petitioner; allegations were made regarding behaviour of the petitioner and his family with the women folk of the house. Averments were made that respondent's brother visited petitioner's home several times alongwith 'Panchayat' and 3 made several efforts to permit the respondent to stay in the matrimonial home, however, the petitioner refused and her brother Ram Singh was turned out of the house saying that he (petitioner) would remarry after taking divorce. It was alleged in the written statement that after the petitioner got employment as Teacher, the respondent was turned out of the matrimonial home and, since then, she was staying with her brother. Efforts were made by her alongwith brother to get back into the matrimonial home, however, she was not permitted to enter the same; respondent was prepared to perform her matrimonial obligations even now. In the additional pleas, it was submitted that allegations about failure to perform matrimonial obligations have been made, however, application under Section 9 of the Act has not been filed, which clearly indicates that it is the petitioner, who is not performing the matrimonial obligations;

the petitioner is a government Teacher and respondent is a uneducated village lady and now as the petitioner wants to take another woman in marriage, the petition has been filed. The trial court framed two issues; issue No.1 related to desertion and issue No.2 related to relief. On behalf of the petitioner - 5 witnesses were examined and on behalf of the respondent - 3 witnesses were examined. The trial court after thoroughly analyzing the evidence on record, came to the conclusion that the petitioner has failed to make out a case of desertion. The trial court also came to the conclusion that in view of the statement of PW-3 Ram Pratap and the fact that after the appointment of the petitioner as Teacher, the respondent was staying with her brother, it appears a probable reason that after the appointment of the petitioner as Teacher, the respondent has been turned out of the matrimonial home. Consequently, the trial court dismissed the petition seeking divorce. It was submitted by learned counsel for the petitioner that the finding recorded by the trial court is perverse and, is a result of misreading of evidence, the desertion by the respondent is apparent from the record. It was further submitted that the marriage was solemnized in the year 1978, admittedly the parties are living separately since 1986 and there is no issue from the marriage and there is no possibility of any reconciliation between the parties, therefore, it is apparent that the marriage between the parties has irretrievably broken down and, therefore, the petitioner was entitled for a decree of divorce. Reliance was placed on judgment of Hon'ble Supreme Court in the case of Naveen Kohli v. Neelu Kohli : (2006) 4 SCC558 and Samar Gosh v. Jaya Gosh : (2007) 4 SCC511. Learned counsel appearing for the respondent supported the judgment impugned passed by the trial court. It was submitted that it is apparent from the pleadings and evidence on record that it is the petitioner, who is guilty of turning the respondent out of the matrimonial home for apparent reasons that the petitioner has got the education and has got employment as a government Teacher and the respondent being an uneducated lady of rural background, the petitioner now is seeking to ease her out of his life by way of the present proceedings. The petitioner cannot be permitted to take advantage of his own wrong and the judicial forum cannot be permitted to be used for said ill designs of the petitioner. I have considered the rival submissions, gone through the record of the trial court, findings recorded by it and the law cited at the Bar. It would be

appropriate to quote the relevant part of the petition filed by the petitioner, which reads as under:-

3. *, 3 4 3 4 4- 3 : 3 * * 6 : 4 4 4 : , * * * A , 3 4 * C 4 5- 4 : : 4 , , , , * * 4 , 4 , 4 * : : 4 * : C I 6- * 6 K C 4 I 7- 4 4 I 3 C C 4 6 C : 4 3 3 I 8- -* 4 I 3 3 : I" A bare reading of the averments made in the petition as quoted above would reveal that quite cursory and hazy allegations have been made in the petition, inter alia, alleging the respondent as of freelance nature; respondent living at her parents' place at her own volition, petitioner suffering mental shock and being deprived of his marital rights. However, specific allegations either alleging desertion and/or cruelty as such are absent from the said averments and in fact the averments contained in the petition did not make out the case either under Clause (ia) or (ib) of Section 13(1) of the Act, which provides grounds relating to cruelty and desertion. Hon'ble Supreme Court in *Adhyatma Bhattar Alwar v. Adhyatma Bhatar Sri Devi* : (2002) 1 SCC308 while dealing with the requirements of desertion held thus:- 7. Desertion. in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are:

1. the factum of separation; 2. the intention to bring cohabitation permanently to an end - animus deserendi; 3. the element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period; The clause lays down the rule that desertion to amount to a matrimonial offence must be for a continuous period of not less than two years immediately preceding the presentation of the petition. This clause has to be read with the Explanation. The Explanation has widened the 7 definition of desertion to include willful neglect. of the petitioning spouse by the respondent. It states that to amount to a matrimonial offence desertion must be without reasonable cause and without the consent or against the wish of the petitioner. From the Explanation it is abundantly clear that the legislature intended to give to the expression a wide import which includes willful neglect of the petitioner by the other party to the marriage. Therefore, for the essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly, two elements are essential so far as the

deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petition for divorce bears the burden of proving those elements in the two spouses respectively and their continuance throughout the statutory period.

. Hon'ble Supreme Court has laid down that 'essential ingredients' for desertion as (a) the factum of separation, (b) animus deserendi and (c) the elements of permanence during the statutory period. From the averments quoted above, it is apparent that petitioner has failed to give out the essential ingredients indicated hereinabove and has made allegations, which as observed hereinbefore, are wholly cursory and hazy in nature and the same cannot make out a ground for seeking divorce on the ground of desertion. The petition as filed in fact did not disclose any cause of action in absence of essential ingredients required for making out a ground of desertion. So far as the ground of cruelty is concerned, neither any averment in this regard has been made in the petition nor any evidence led on the said aspect. Mere mention in the petition that respondent's behaviour caused mental shock to the petitioner, by itself cannot make out a case of cruelty. Even otherwise, no issue in relation to ground of cruelty was framed by the trial court and the same has not even been questioned in the present case. From the statements of the petitioner witnesses also no case of desertion was made out by the petitioner. The petitioner in his statement, as PW-1, admitted that the respondent wife stayed at the matrimonial home till the year 1986 and in the year 1988 when petitioner's father expired, she had visited the matrimonial home and her brother had performed the social obligations; after the death of petitioner's father, the petitioner did not make any effort to bring the respondent back to the matrimonial home; respondent's belongings are still lying at petitioner's house. The most outstanding feature of the statements of the petitioner's witnesses is that allegations have been made that respondent's brother refused to send her back to the matrimonial home and that they (petitioner's witnesses) had no talk with the respondent herself, which essentially means that she never refused to go back to the matrimonial home. The time-line indicated in the statement of the petitioner is also important as he has indicated that he completed his M.A., B.Ed. in the year 1986-87 and he got service as Teacher in

the year 1992. The said years of his getting degree of B.Ed. and service as Teacher coincides with the year of alleged desertion by the wife in the year 1986 and filing of petition seeking divorce by the petitioner in the year 1992. PW-3 Ram Pratap, who is brother-in-law (gainer) of the 9 petitioner indicated in his statement that till the time father of the petitioner was alive, the petitioner and respondent had good relations; whenever he visited petitioner's home, respondent used to respect him; till the petitioner got employment as Teacher, there was no dispute between the petitioner and respondent and they used to visit each other. The respondent in her statement clearly indicated that her goods/articles were lying at petitioner's place; she was prepared to live with the petitioner and was ready to follow the condition placed by him and that she did not want divorce. From the above statements, it is apparent that the relations between the parties since marriage till about the year 1986/1988 were cordial and it is on account of the petitioner getting the degree of B.Ed., which apparently resulted in his change of attitude towards respondent, who is admittedly uneducated and of rural background and on getting employment as Teacher in the year 1992, the petitioner has taken steps for seeking divorce from the respondent. From the statements of the parties, nothing has come on record so as to make out a case either of desertion on her part and/or cruelty towards the petitioner, therefore, the findings recorded by the trial court do not call for any interference. So far as the plea raised by the learned counsel for the petitioner-appellant regarding irretrievable breakdown of marriage between the parties is concerned, as has been held by the trial court and affirmed hereinbefore that it is the petitioner-appellant, who has turned the respondent out of the matrimonial home and has failed to make out any case of desertion and/or cruelty, the issue arises is whether the petitioner can be given benefit of his own wrong and the marriage can be dissolved on account of alleged 'irretrievable breakdown of marriage', which is a result of petitioner's own conduct. Hon'ble Supreme Court in *Neelam Kumar v. Dayarani* : (2010) 13 SCC298 observed and held as under:-

13. The counsel for the appellant then submitted that the appellant's marriage with the respondent had completely broken down with no hope of revival and compelling them to live together would be very hard and unjust. He made a plea for dissolution of marriage on the ground of its irretrievable breakdown. In support

of the submission, learned counsel relied on the judgment of this Court in *Satish Sitole v. Ganga*, wherein it was held in the last paragraph as follows: (SSC p. 737, para 14)

14. that since the marriage between the parties is dead for all practical purposes and there is no chance of it being retrieved, the continuance of such marriage would itself amount to cruelty, and, accordingly, in exercise of our powers under Article 142 of the Constitution we direct that the marriage of the appellant and the respondent shall stand dissolved..... 14. We are not impressed by this submission at all. There is nothing to indicate that the respondent has contributed in any way to the alleged breakdown of the marriage. If a party to a marriage, by his own conduct brings the relationship to a point of irretrievable breakdown, he/she cannot be allowed to seek divorce on the ground of breakdown of the marriage. That would simply mean giving someone the benefits of his/her own misdeeds.

. Again in *Darshan Gupta v. Radhika Gupta* : (2013) 9 SCC1 it was observed and held as under:-

49. Towards the same end, the learned counsel for the appellant advanced yet another 11 submission. The learned counsel representing the appellant sought dissolution of marriage on the ground that the matrimonial ties between the parties had irretrievably broken down. It was, therefore, the contention of the learned counsel for the appellant that this Court would be justified in annulling the marriage between the parties, especially when the parties have lived apart for more than 12 years. Inviting this Court's attention to the intervention at the instance of this Court, in compliance wherewith the parties had made a last-ditch effort to live together, and had actually taken up residence in an independent flat in Hyderabad on 29-9-2011, it was pointed out that they could not persuade themselves into a relationship of cordiality. It was, therefore, sought to be suggested that there was no likelihood of the parties ever living together as husband and wife. It was accordingly submitted that this Court should consider the annulment of the matrimonial ties between the parties on the ground of irretrievable breakdown of marriage.

50. At the present juncture, it is questionable as to whether the relief sought by the learned counsel for the appellant on the ground of irretrievable breakdown of marriage is available to him. The reason for us to say so is based on a judgment rendered by this Court in Vishnu Dutt Sharma v. Manju Sharma, wherein this Court has held as under: (SCC p. 384, paras 10-13)

10. On a bare reading of Section 13 of the Act, reproduced above, it is crystal clear that no such ground of irretrievable breakdown of the marriage is provided by the legislature for granting a decree of divorce. This Court cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature.

11. Learned counsel for the appellant has stated that this Court in some cases has dissolved a marriage on the ground of irretrievable breakdown. In our opinion, those cases have not taken into consideration the legal position which we have mentioned above, and hence they are not precedents. A mere direction of the Court without considering the legal position is not a precedent.

12. If we grant divorce on the ground of irretrievable breakdown, then 12 we shall by judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the legislature and not by the Court. It is for Parliament to enact or amend the law and not for the courts. Hence, we do not find force in the submission of the learned counsel for the appellant.

13. Had both the parties been willing we could, of course, have granted a divorce by mutual consent as contemplated by Section 13-B of the Act, but in this case the respondent is not willing to agree to a divorce.. 51. In this behalf, it would also be relevant to refer to another judgment rendered by this Court in Gurbux Singh v. Harminder Kaur. Para 20 of the cited judgment is relevant to the issue, and is accordingly being extracted hereunder: (SCC p.308)

20. Finally, a feeble argument was made that both the appellant and respondent were living separately from 2002 and it would be impossible for their reunion, hence this Court exercising its jurisdiction under Article 142 of the Constitution,

their marriage may be dissolved in the interest of both parties. Though, on a rare occasion, this Court has granted the extraordinary relief dehors the grounds mentioned in Section 13 in view of the fact that the issue has been referred to a larger Bench about permissibility of such course at present, we are not inclined to accede to the request of the appellant. If there is any change of law or additional ground included in Section 13 by the Act of Parliament, the appellant is free to avail the same at the appropriate time.. 52. Even otherwise, in the facts and circumstances of this case (which are being highlighted while dealing with the appellant's next contention), we cannot persuade ourselves to grant a decree of divorce on the ground of irretrievable breakdown of marriage, for the simple reason that the breakdown is only from the side of the husband. The wife Radhika Gupta has consistently maintained that she was intensely concerned with her future relationship with her husband and that her greatest and 13 paramount desire was to rejoin her husband and to live with him normally in a matrimonial relationship once again. Since in the present case, the respondent does not consent to the severance of matrimonial ties, it may not be possible for us to accede to the instant prayer made at the hands of the learned counsel for the appellant.

. (emphasis supplied) In view of the law laid down by the Hon'ble Supreme Court in the case of Neelam Kumar (supra) and Darshan Gupta (supra), it is apparent that the ground of irretrievable breakdown of marriage, even if available, cannot be invoked by the petitioner in an attempt to take advantage of his own wrong. Consequently, there is no substance in the appeal and the same is, therefore, dismissed. No costs. (ARUN BHANSALI), J.

A.K.Chouhan/-

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