

Suresh Vs. Smt.Usha

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Court : Rajasthan Jodhpur

Decided On : May-16-2014

Appellant : Suresh

Respondent : Smt.Usha

Judgement :

1 N THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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D.B.Civil Misc.Appeal No.256/2011 Suresh Gurjar V/s Smt.Usha Gurjar 2.

D.B.Civil Misc.Appeal No.255/2011 Suresh Gurjar V/s Smt.Usha Gurjar Date of Judgment:- 16.5.2014 PRESENT Hon'ble the Chief Justice Mr.Amitava Roy Hon'ble Mr.Justice Vijay Bishnoi Mr.Shreyansh Mardia for the appellant-husband.

Mr.Rajesh Choudhary for the respondent-wife.

JUDGMENT

BY THE COURT (Per Hon'ble Amitava Roy,CJ.The appellant-husband seeks annulment of the judgment and order dated 10.4.2010 passed by the learned Family Court, Udaipur in cases no.68/06, 169/06 and 15/07 thereby in essence rejecting his application under section 13 of the Hindu Marriage Act, 1955 (for short, hereinafter referred to as the Act.) for dissolution of his marriage with the

respondent-wife and instead directing restitution of conjugal rights of the parties as sought for by her under section 9 of the Act.

The respondent-wife's application under section 27 of the Act for an order to return her ornaments and 2 other valuable articles given at the time of marriage and allegedly retained by the appellant-husband was however dismissed.

We have heard Mr.Shreyansh Mardia, learned counsel for the appellant-husband and Mr.Rajesh Choudhary for the respondent- wife.

The pleaded versions of the parties in short would outline the backdrop of the discord.

The appellant-husband averred that the parties were married according to the Hindu rites and rituals on 11.2.2005, whereafter the respondent was brought to the matrimonial home.

In substance, the appellant-husband stated in his application for divorce that from the very fiRs.night, the respondent-wife obdurately and curtly refused to discharge her marital obligations and co-habitate with him.

Instead, she threatened him and on the very fiRs.night also assaulted him with lathi.

While maintaining this attitude, the respondent-wife also proclaimed to be the love of some one else.

Though after 3 days she left for her parents' house, she returned, but maintained the same disposition.

The appellant-husband alleged further that eventually on 4.4.2005, she deserted the nuptial home after taking her all belongings including ornaments.

Contending that by her conduct he had been subjected to unbearable mental and physical agony and suffering amounting to cruelty, he sought dissolution of the marriage.

The respondent-wife in her written statement denied the allegations and imputed ill-treatment from the appellant-husband 3 as well as the other members of the family based on dowry demands.

She also alleged to be assaulted now and then for the same reason for which she admitted to have instituted a proceeding under section 498A IPC against the appellant for which he was arrested, but later on released on bail.

Insisting that she had always been ready and willing to discharge her marital obligations and consolidate her marriage with the appellant, the respondent sought for dismissal of the application for divorce.

She also filed an application for restitution of conjugal rights reiterating the above.

An application under section 27 of the Act was also filed for a direction to the appellant-husband to return her ornaments and other dowry articles allegedly withheld by him.

The appellant in his written statement to the application under section 9 of the Act reiterated his assertions as made in the application under section 13 and contended that the respondent was not entitled to any decree for restitution of conjugal rights.

He also resisted the application under section 27 of the Act contending that the respondent while abandoning him had taken her ornaments and that further, the police in connection with the case under section 498A IPC had seized and taken away the remaining goods/articles given or received at the time of marriage.

Following the framing of the issues, the parties adduced evidence.

Whereas the appellant examined himself, Sita Devi, his Aunt and Lal Singh, neighbour, the respondent offered her oral evidence to be reinforced by that of her father Narayan Lal.

4 The learned Family Court, Udaipur as adverted to hereinabove on an assessment of the rival pleadings and the evidence on record dismissed the prayer for divorce made by the appellant-husband and allowed the one for

restitution of conjugal rights registered by the respondent-wife.

Her application for direction to return her ornaments and other dowry articles was however rejected.

Mr.Mardia has argued that the impugned judgment and order so far as it relates to the rejection of the prayer for dissolution of marriage and grant of the decree for restitution of conjugal rights is unsustainable in law and on facts as the learned court below not only misread the evidence but also had approached the issues in apparently erroneous and illegal perspectives.

The learned counsel argued that the appellant-husband having been able to establish that the conduct of the respondent-wife did constitute unbearable cruelty making it impossible for him to live in her company without risking his life and safety, the learned Family Court ought to have granted dissolution of marriage.

As the evidence adduced by the appellant and his witnesses on the aspect of cruelty did totally outweigh that offered in repudiation thereof by the respondent-wife, the denial of decree for divorce has resulted in apparent illegality warranting interference with the impugned judgment and order, he urged.

Mr.Mardia argued further that the appellant having proved cruelty under section 13 of the Act as a ground for divorce, the learned court below patently erred in directing 5 restitution of conjugal rights.

According to the learned counsel, initiation of criminal proceeding under section 498A IPC on false allegations did lower the appellant in social esteem causing immense mental pain and suffering amounting to cruelty.

Per contra, Mr.Choudhary has asserted that the appellant having totally failed to prove cruelty as comprehended to be a ground of divorce under the Act, the learned Family Court did rightly reject his prayer for dissolution of marriage and direct restitution of conjugal rights of the parties.

According to the learned counsel, not only the allegation of unjustified and unrelenting abstinence from co-habitation on the part of the respondent-wife is

utter falsehood, the appellant and his family members having subjected her (respondent) to persistent dowry demands and assaults stemming therefrom, he could not be in law granted the decree of divorce and thereby permitting him to take advantage of his own wrong.

We have examined the pleaded facts and the documents on record and have also analyzed the arguments advanced.

In couRs.of the hearing we have interacted as well with the parties, who were summoned by the Court to explore the possibility of reconciliation.

Deliberations with them, however, clearly demonstrated that at this point of time they are not favourably disposed to restore their home.

On being queried by us, they disclosed that they have no children out of the wedlock.

The appellant further disclosed that he was presently serving as a 6 Home Guard with the State Government and claimed to be receiving Rs.6000/- p.m.as net pay.

He informed the Court that his parents are living and his sisters are already given in marriage.

He stated that his father had already retired and his mother is a home maker.

The respondent-wife admittedly leaving separately from 4.4.2005 did disclose to the Court that she was presently pursuing the academic couRs.in graduation.

She stated that her parents are also living and that her elder sister is married, but her two younger brothers are still studying.

That her father was doing a private job was mentioned as well.

She stated to be fully dependent on her parents for her sustenance.

It is submitted at the Bar that presently on the orders of the Court, the appellant is paying a sum of Rs.3000/- p.m.to the respondent as monthly maintenance.

The appellant, however, claimed that the respondent is also engaged in private business.

Be that as it may, noticeably, the parties as their testimony before the learned court below would evince did substantially stand by their pleaded averments.

In cross examination of the appellant, he was confronted with a volley of suggestions on behalf of the respondent in reiteration of her assertions in her written statement and application for restoration of conjugal rights, which he denied in absolute terms. He reiterated that not only the respondent refused to co-habit with him from the first night of the marriage, she claimed to be the sweet heart of some one else and alleging false allegations of dowry demands, she had also instituted a criminal case under section 498A IPC against him, his parents and sisters in connection with which he was arrested.

AW2 Sita Devi, the aunt of the appellant stated that she was reported by him of her (respondent) non-cooperative attitude in the discharge of her marital obligations.

She denied the allegations of assault, torture and ouster of the respondent from her nuptial home as alleged.

The evidence of AW3 Lal Singh is not very material.

The respondent reiterated her accusation of persistent demands of dowry and ill treatment based thereon and of being thrown out of the marital home on 4.4.2005 after being assaulted and also denied the allegations of unjustified and unexpected resistance to marital co-habitation.

She was also confronted with several suggestions in support of the case of the appellant which she denied.

She, however, admitted to have instituted a case under section 498A IPC against the appellant and his family members. NAW2 Narayan Lal, her father while denying the suggestion that no dowry demands as alleged had been made, also admitted the institution of the above criminal proceeding.

The learned court below rejected the case of the appellant as absurd and held that he had failed to prove cruelty within the meaning of Section 13 of the Act.

While noticing the respondent's imputations of dowry demands and torture, it held that an opportunity ought to be granted to the parties to restore the marital alliance for all practical purposes.

The order for 8 restoration conjugal rights was thus passed and prayer for dissolution of marriage was rejected.

True it is that in a proceeding for dissolution of marriage under the Act, the burden of proving the ground therefor is essentially on the applicant.

It is a trite law that day to day dealings contributing to the wear and tear of married life per se would not constitute cruelty as envisaged under section 13.

However, if as a consequence of persistent frictional existence of the spouses traceable to the conduct of one of them results in killing agony, pain and suffering in the other, filling his/her mind with indelible apprehension of risk to life and safety, the law comprehends cruelty as ground for granting practical alleviation of the devastated partner from the company of the offending partner by effecting dissolution of marriage.

While applying this yardstick, however, the social strata of the families to which the parties belong, their academic accomplishments and overall family environment and values and most importantly their temperament and incidental personal attributes cannot be left out of consideration.

The situation thus has to be judged on the touchstone of realities of life and decisively by the standard and the norms of living of the spouses.

No absolute parameter thus can either be evolved or applied irrespective of these singular determinants.

The requirement however of an unbearable relationship effacing the foundational faith to hold the alliance cannot be eschewed.

9 The evidence adduced by the parties though evenly balanced, by applying the rule of preponderance of probability, we are inclined to accept the appellant's version that the respondent was adamant in her disinclination to discharge her marital obligations including co-habitation.

Co-habitation, as held by the learned court below though according to it cannot constitute the bedrock of dissolution of marriage, undeniably is an act securing consummation of marriage.

Unwarranted and unjustified denial of co-habitation by any of the spouses thus having regard to the mental state and level of sensitivity of the other spouse may result in intolerable pain and anguish resulting in cruelty as envisioned by the Act.

Coupled with this is the admitted institution of a criminal case under section 498A IPC against the appellant and his family members in connection with which he had been arrested by the police.

That in couRs.of such proceeding, the police had also seized the valuable articles said to be the stridhan property of the respondent is a matter of record.

In couRs.of the arguments, it was alleged on behalf of the respondent that the appellant has remarried and that thus, she now does not wish to return to him.

The factum of second marriage has been denied vehemently by the appellant.

The allegations of demands of dowry and torture in reply to the assertions made by the appellant also unequivocally demonstrate the confrontative positions of the parties not conducive to rehabilitation.

The parties have disclosed to the Court that 10 whereas the appellant is aged 32 yeaRs.the respondent is 27 yeaRs.Agewise thus the whole life awaits them.

On a conjoint consideration of all above, we are thus inclined to grant dissolution of marriage between the parties.

The impugned judgment and order to the extent which relates to dissolution of marriage and restoration of conjugal rights is thus reversed.

On the aspect of permanent alimony, when queried by us, the learned counsel for the respondent on instruction has submitted that she is agreeable to amount of Rs.5 lacs if all her valuable articles withheld by the appellant are returned and Rs.10 lacs if not so.

The learned counsel for the appellant submitted that as he (appellant) is a Home Guard drawing a sum of Rs.6000/- p.m.as net pay, he would be in a position to pay an amount of Rs.5 lacs but in easy instalments.

He has reiterated that all valuable articles received or given in marriage have since been taken away by the respondent or seized by the police and returned to her.

Admittedly, the respondent has not preferred any appeal against the order of the learned court below rejecting her application under section 27 of the Act for return of her ornaments and other dowry articles.

That meanwhile the police had seized the dowry articles and had returned the same to her has been recorded by the learned court below in its order dated 10.4.2010.

It has noted as well that the respondent could not prove what 11 ornaments or dowry articles had been given in marriage and taken to the matrimonial home and withheld by the appellant and his family members. In absence of any challenge to these findings, there is no reason to differ therefrom being based on the materials on record.

In this view of the matter, on a consideration of all relevant aspects in context of the requisites of Section 25 of the Act, we are inclined to fix the amount of permanent alimony at Rs.5 lacs.

Ordered accordingly.

The appellant would pay the entire amount within a period of three months from today by cash/demand draft in the name of the respondent.

On the payment of this amount, the appellant would be relieved of the responsibility of paying monthly maintenance allowance of Rs.3000/- p.m.since

thereafter.

The parties, after the payment of the amount of permanent alimony is made, would take necessary steps in law to ensure closure of other pending cases between them.

Needless to say that on the payment of the above amount of permanent alimony, the respondent would not have any further claim arising from the marriage against the appellant.

The appeals are disposed of in the above terms. A copy of this judgment be placed in both the files.

(Vijay Bishnoi)J.

(Amitava Roy)CJ12Parmar

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