

Dilip Vs. Rekha

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Court : Mumbai Nagpur

Decided On : Jun-10-2016

Judge : The Honourable Mrs. Justice Vasanti A. Naik & The Honourable Mrs. Justice Swapna Joshi

Appeal No. : Family Court Appeal No. 121 of 2014

Appellant : Dilip

Respondent : Rekha

Judgement :

Oral Judgment: (Vasanti A. Naik, J.)

1. By this Family Court Appeal, the appellant challenges the judgment of the Family Court, Nagpur, dated 23.02.2010 allowing a petition filed by the respondent for restitution of conjugal rights, under Section 9 of the Hindu Marriage Act and directing the appellant to join her company for cohabitation.

2. Few facts giving to the Family Court Appeal are stated thus,

The appellant (hereinafter referred to as 'the Husband' for the sake of convenience) and the respondent (hereinafter referred to as 'the Wife') were married at Nagpur according to Hindu rites and custom on 20.08.2002. It was the second marriage for both, the husband and the wife, inasmuch as the marriage of the husband with his first wife was dissolved by a decree of divorce and the first

husband of the wife had expired. Both, the husband and the wife, had two issues each from their first marriage at the time of the solemnization of their marriage on 20.08.2002. The wife had two daughters from her first marriage and the husband had two sons from his first marriage. After three years from the solemnization of the marriage, the Wife filed a petition against the husband under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. It was the case of the wife that the husband had married the Wife only with a view to grab her money and property and he had no intention to have normal matrimonial relationship with her. The wife pleaded that the husband used to always say that he would change his wife every four years as if it was his business. It is pleaded that the husband always asked the wife to purchase the household articles and also utilized her money for construction of the first floor and for purchase of several amenities including an iron gate.

It is pleaded that the wife used to purchase the grocery from her own income. After two years of marriage, it is the case of the wife that her daughters came to reside in the matrimonial home and the husband physically and mentally harassed her and her daughters. It is pleaded that the Husband used to throw hot water from the bathroom, shout loudly and switch of the lights whenever the daughters of the wife were engaged in their study. It is pleaded that the husband used to threaten the wife that he would murder her two daughters if they stay with him in the matrimonial home. It is pleaded that the Husband had stopped taking dinner in his own house and had started taking the dinner in the house of his aunt. It is pleaded that the wife used to prepare the food for herself and her two daughters but, the husband did not permit her to do so. It is pleaded that the husband had removed the regulator of the cylinder with an intention that the wife and her daughters should remain without food. It is pleaded that she had purchased a kerosene stove to cook the food but, the husband and his two sons would put water in the tank of the kerosene stove. It is pleaded that the wife and the two daughters were residing in the matrimonial home without taking any food due to the misconduct on the part of the husband.

It is pleaded that the wife and her daughters used to call for a tiffin from the mess (dabba) but, the husband used to lock the room from outside and prevent the Wife

from taking the food. It is pleaded that the TVS Scooty of the Wife was sold by the Husband for a sum of Rs.7,500/- and he pocketed the said amount. It is pleaded that though the wife had given a sum of Rs.17,000/- to the husband to purchase a Honda Activa for her on Akshaya Tritiya in 2005, the husband purchased a Honda Activa in the name of his son. It is pleaded that the husband used to steal the sarees of the wife from the almirah when she was at Nasik. It is pleaded that when the wife enquired with the Husband about the sarees he had stolen, the husband hit the wife. It is pleaded that though a meeting was called by the parties to solve the disputes amicably and to settle the matter on 10.09.2006, the husband caught hold of the wife with her hair and forcefully threw her out of the matrimonial home. It is pleaded that in the circumstances of the case, a decree of restitution of conjugal rights be granted as the Husband had withdrawn from the company of the Wife, without any reasonable excuse.

3. The husband filed the written statement and denied the claim of the wife. Each and every statement of fact as pleaded by the wife, levelling allegations against the Husband was denied by him. After denying the facts pleaded by the wife against the husband, the husband pleaded that the wife was treating the husband with utmost cruelty. The husband pleaded that when the husband got up during the dead of midnight at 3.00 a.m. in the month of December-2005, he saw the wife standing with her hair open and her tongue fully outside the mouth in the Pooja Room. It is pleaded that the wife was involved in witchcraft and the husband was frightened by the act on the part of the wife. It is pleaded that during the stay of the husband with the wife, the husband suffered from high blood pressure and was required to take medicine. It is pleaded that the husband started sleeping separately on the first floor but, the wife used to blow the ash of Dhoop from open window so that it would reach the husband on the first floor in the early morning hours. It is pleaded that the wife used to bring lemon and coconut from one Baba and keep the same in the house. It is pleaded that the wife was so arrogant that the husband had no courage to ask the wife about her acts. It is pleaded that the wife was of suspicious nature and in the month of March-2005, when the husband was travelling in a general auto-rickshaw for reaching the S.T. bus stand, the wife asked the husband as to whether the same lady passenger in the autorickshaw had accompanied him in the S.T. bus.

The husband pleaded that the wife asked the husband what relation he had with the lady passenger. It is pleaded that the wife stole the undergarments of the husband continuously for one month as a result of which he was required to purchase new undergarments almost daily. It is pleaded that the acts on the part of the wife compelled the husband to sleep on the first floor. It is stated that the wife had fought with the husband, pushed him and scratched his cheek with such force that his cheek had a bleeding injury. It is pleaded that the wife used to regularly come to the workplace of the husband and create a scene. It is pleaded that it would not be possible for the husband to live with the wife under one roof. It is pleaded that in the circumstances of the case, a decree of restitution of conjugal rights should not be passed in favour of the wife.

4. On the aforesaid pleadings of the parties, the Family Court framed the issues. The wife tendered her evidence and closed the evidence on her side. The husband examined himself and also examined two other witnesses namely, Aleem Mohd. Haneef Shiledar and Narayan Kawaduji, Supervisor in the Bank of Maharashtra. The Family Court considered the evidence tendered by the parties and on an appreciation of the same, by the judgment, dated 23.02.2010, allowed the Hindu Marriage Petition filed by the wife and granted a decree of restitution of conjugal rights, thereby directing the husband to join the company of the wife for cohabitation. The judgment of the Family Court is challenged by the husband in this Family Court Appeal.

5. Shri S.B.Tiwari, the learned counsel h/for Mr. Rajnish Vyas, the learned counsel for the husband, submitted that the Family Court was not justified in granting a decree of restitution of conjugal rights thereby directing the husband to join the company of the wife. It is stated that the Family Court did not appreciate the evidence tendered by the parties in the right perspective while passing a decree of restitution of conjugal rights. It is stated that the witnesses examined on behalf of the husband were lightly brushed aside by the family Court. It is submitted that the allegations made by the wife against the husband were falsified by her admissions in her cross-examination. It is submitted that the case of the wife that the husband had married her due to her strong financial position and that he was in the habit of marrying women and leaving them after every four years was shattered by her

admission in the cross-examination that she does not have any property in her name and that the husband had cohabited with his first wife for a period of more than 13 years. It submitted that the admission of the wife that the entire household expenses were incurred by her was falsified by her evidence that both the husband and the wife contributed for the household expenses. It is submitted that in the circumstances of the case, the Family Court could not have allowed the petition for restitution of conjugal rights, more so after recording a finding that there was no reason for the parties to live separately.

It is submitted that the evidence of the husband that the wife had clawed the cheek of the husband and his cheek was injured because of her act has remained unchallenged. It is submitted that the Family Court has not considered the entire evidence and has recorded the reasons only in three paragraphs of the judgment. It is submitted that the witness examined by the husband namely Aleem Mohd. Haneef Shiledar could not have been disbelieved merely because he was the friend of the husband. It is submitted that the Family Court committed a serious error in holding that the husband should have examined witnesses to prove his allegation that the wife was practicing witchcraft. The learned counsel submitted that in the circumstances of the case, the judgment passed by the Family Court should be set aside.

6. None appeared for the respondent on 9.6.2016. None appears for the respondent today also.

7. On hearing the learned counsel for the appellant and on a perusal of the record and proceedings, the following points arise for determination in this Family Court Appeal :-

A) Whether the respondent is entitled to a decree for restitution of conjugal rights?

B) What order?

8. To answer the aforesaid points for determination, it would be necessary to consider the pleadings of the parties and evidence tendered by them. Since we have already narrated the pleadings of the parties in the earlier part of the

judgment, it would not be necessary to reiterate the pleadings. The wife had examined herself. She had stated the same facts that were pleaded in the Hindu Marriage Petition in her examination-in-chief, on affidavit. The wife was cross-examined by the counsel for the husband. In the cross-examination, the wife clearly admitted that she had no property in her name. The wife admitted that the husband was working in a Bank and was earning more than Rs.20,000/- per month. She further admitted that she was working in the Social Work Department and the husband was earning more than her. The wife admitted that she had not submitted any receipt of the articles purchased by her in the matrimonial home. The wife, however, denied the suggestion that she had not expended for purchasing the household articles or the grocery. Some other suggestions pertaining to the acts of cruelty by the wife were denied by her. The wife admitted that she had filed a Complaint before the Mahila Cell, but she had withdrawn the same. The wife further admitted that she had no document to show that she had paid a sum of Rs.17,000/- to the husband to purchase Honda-Activa for her. She denied the suggestion that she believed in witchcraft. She further denied that on the eve of Ramnavami in 2006, she tore the shirt of the husband, snatched the gold chain from his person, bit on his cheek and removed the golden ring from the cupboard of the husband. The wife denied that the husband had an injury as she had clawed on his cheek. She denied the suggestion that she had a suspicious nature while admitting that the husband had suffered a fracture injury to his left hand in June 2006, because the motorbike that he was riding, slipped. The wife denied that she spent her salary on herself and her daughters and kept the rest of the amount in the Recurring Deposits. The wife lastly stated that though the husband had harassed her, she was ready to cohabit with him for the sake of her marriageable daughters.

9. The husband examined himself and reiterated the statements made by him in the written statement. The husband admitted in his cross-examination that he had severed the ties with his first wife and the marriage between them was dissolved by a decree of divorce after a period of 13-years. The husband stated in his evidence that he had secured a loan from the Bank of Maharashtra for construction of the first floor of his house. The husband stated in his evidence that he was working in the Bank of Maharashtra as a Computer Operator, since the

year 1987. He admitted in his cross-examination that the wife was cooking in the evening and the maidcook cooked the food in the morning. The husband denied the suggestion that after seven months from the marriage he started eating outside the house. It was stated that he had started eating outside after a period of 2 to 3 years from the marriage. The husband admitted that the wife had taken a loan from the Bank of Maharashtra on 1.1.2003. It was, however, denied that the wife used to come to his Bank for repayment of loan. The husband stated that the wife unnecessarily came to his work place frequently and created a scene. It was stated that his son had purchased a Honda-Activa and the wife had not paid a sum of Rs.17,000/- to him, for purchasing the vehicle for herself. The husband denied the suggestion that the nature of the wife was not suspicious. It was admitted by the husband that for the past three years the parties were residing separately. The husband admitted that he had not filed the petition against the wife due to physical and mental harassment by her. The husband denied the suggestion that he had withdrawn from the company of the wife without any just and reasonable cause or excuse.

10. The husband examined Aleem Mohd. Haneef Shiledar. The said witness claimed that he was residing in the vicinity of the house of the husband and had friendly relations with the parties. Aleem Mohd. stated in his evidence that the husband was very polite, submissive and simple. The witness further stated in his examination-in-chief that the husband always helped the needy persons and had cordial relations with his friends and relatives. It was stated that a false complaint was lodged by the wife against the husband in the Police Station, Sakkardara and he had to attend the Police Station on 14.7.2006. It was stated that the wife behaved badly in the meeting that was held for considering whether there could be an amicable settlement between the parties. The witness was cross-examined. Aleem Mohd. stated in his cross-examination that his house was at five minutes distance from the residence of the husband. He denied the suggestion that his house was located at a distance of 12 kms. from the house of the husband. Aleem denied the suggestion that in the meeting held on 10.9.2006 the husband caught hold of the wife by her hair and dragged her out of the matrimonial home. Aleem denied the suggestion that he was deposing falsely at the instance of the husband.

11. The husband then examined Narayan Pyaramwar, who was working as a Supervisor in the Bank of Maharashtra. The said witness deposed that the husband has taken a loan from the bank to the tune of Rs.60,000/- from the Bank on 5.3.2003 and a sum of Rs.2,000/- per month was being deducted every month, towards the repayment of the loan. Nothing was brought out of the cross-examination of this witness to falsify his case in the examination-in-chief.

12. On a perusal of the evidence of the parties, it appears that the wife was not desirous of telling the truth. The wife had pleaded in the Hindu Marriage Petition that the husband told her that he would change his wife every four years, as if it is a business. The wife had pleaded in the petition that the husband had married her to grab her property and the entire household expenses were borne by her. The said case of the wife was falsified by her admissions in the cross-examination. The wife had admitted in her cross-examination that she had no property in her name. She further admitted in her cross-examination that the husband was serving in a Bank and earning much more than her. If the husband was earning much more than the wife, it is difficult to believe that the husband would marry her only to grab her money. It appears that the marriage between the husband and wife was a second marriage for both of them. Both of them had two issues at the time of the second marriage. Probably, the marriage was solemnised between the husband and wife, merely with a view to have company. It appears from the pleadings and the evidence of the parties that the said experiment failed miserably and it was not possible for the husband and wife to live happily under one roof. In the petition filed by the wife it was necessary for the wife only to mention that though she was behaving like a normal wife, the husband was not desirous of cohabiting with her and he had withdrawn from her company without just and reasonable excuse. However, the wife has filed a petition for restitution of conjugal right with such pleadings that could be found only in a petition filed by a spouse for divorce.

The wife has levelled several allegations against the husband in the Hindu Marriage Petition. If according to the wife, the husband was so bad, there was no reason for the wife to file a petition for decree for restitution of conjugal rights. The wife had not only pleaded that the husband was desirous of changing his wife every four years and had married her only with a view to grab her money but wife

had further pleaded that the husband used to shout at her in the house and also throw hot water from the bath room. The wife had pleaded that the husband used to switch off the lights in the room where the daughters of the wife from her first husband, were engaged in their studies. The wife had pleaded that the husband had threatened her that he would murder both her daughters from her first husband. It is surprising that despite this, she has prayed for a decree for restitution of conjugal rights. The wife had pleaded that the husband used to remove the regulator from the Gas Cylinder, put water in the tank of the kerosene oil stove that she had purchased and when she had started calling the tiffin (dabba) from outside, he used to lock the room, so that she should remain without food. The wife has painted the husband to be one of the 'worst husbands'. If that be so, it is difficult to understand as to how the wife wanted to reside with the husband and had sought a decree for restitution of conjugal rights. Not only had the wife pleaded the aforesaid facts, but the wife had also pleaded that the husband had misappropriated a sum of Rs.7,500/- that was received by her towards the sale of her TVS Scooty and had mis-utilized a sum of Rs.17,000/- that was required to be utilised for the purchase of her Honda-Activa.

The wife has finally admitted in her cross-examination that though the husband had harassed her, she was ready to cohabit with him. This statement could be made only if there was a compulsion on the wife to stay with the husband. Such a statement should not have been made by the wife when she had filed the petition for restitution of conjugal rights. Most of the statements made by the wife in the petition have been falsified by her evidence in the cross-examination. The husband wanted to change the wife every four years was falsified as this was the second marriage of the husband and the first marriage of the husband lasted more than 13 years. The wife had also admitted that she had no property in her name and that the husband was earning much more than her. She had further admitted in her cross-examination that both the husband and the wife contributed for the household expenses. If that be so, the claim of the wife that the husband had married her for the purpose of grabbing her money, was false. The case of the wife that the entire household expenses were borne by her was also falsified by her, in the cross-examination that the husband and wife contributed towards the household expenses. It is also difficult to believe the case of the wife that the

husband had threatened the wife that he would murder her two daughters from the first marriage as if it was so, the wife would have never approached the Family Court with a prayer for restitution of conjugal rights.

13. The Family Court, however, did not consider the entire evidence tendered by the parties on record. The Family Court recorded the reasons only in a couple of paragraphs of the short judgment that is challenged in this Family Court Appeal. The Family Court has rejected the entire evidence of the husband in regard to the acts of cruelty by the wife only on the ground that the husband had not adduced the evidence of independent witness that had reliable knowledge or information in regard to the acts of cruelty including his allegation in respect of witchcraft being practised by the wife. The Family Court erroneously observed that the case of the husband that the wife scratched his cheek and he suffered a bleeding injury was false and he did not produce any medical evidence to that effect. No husband whose cheek has been clawed and who suffers an injury due to the act of her wife would approach the Doctor and secure a medical certificate for the same. The entire evidence of the husband is lightly brushed aside solely on the ground that the husband had not examined independent witnesses and had not produced medical certificate. The observations of the Family Court to the aforesaid effect are incorrect. In fact, the wife had not examined any witness in support of her case. The husband had examined two independent witnesses, namely, Allem Mohd. from his locality, who had personal knowledge about the nature of the husband and wife and the Bank Supervisor who deposed that the husband had secured a loan from the Bank. In fact, it was necessary for the wife to have examined some witnesses to prove that the husband was behaving badly with her, that he threw the hot water from the bath room, that he was regularly shouting loudly and was switching off the lights from the room in which the daughters from her first husband were studying.

The wife could have examined one of her daughters who were of marriage age to tender evidence in the Court in respect of at least switching off the lights when they were studying. However, the wife did not examine any witness in support of her case, apart from herself. The Family Court erroneously disbelieved the evidence of Aleem Mohd. solely on the ground that he was residing in the same

locality and was the friend of the husband. In fact, a person from the same locality only could tender evidence on the facts involved in the case. Merely because Aleem Mohd. was the friend of the husband, his evidence could not have been lightly brushed aside. The Family Court did not consider that the wife had painted a very dark picture of her husband and despite that she was seeking a decree for restitution of conjugal rights. The Family Court observed that there was no concrete reason for the parties to live separately. On the basis of the pleadings of the parties, both the husband and the wife, it was necessary for the Family Court to hold that there were several justifiable reasons for the parties to live separately. The statement of wife that though the husband had behaved badly with her and had harassed her, she is ready to join his company cannot be enough for granting a decree for restitution of conjugal rights. On a perusal of entire evidence on record, we are clearly of the view that it is necessary to hold that the husband had not withdrawn from the company of the wife without any just and reasonable excuse. In the circumstances of the case, it was not possible for a middle aged parties to stay under one roof and the parties had separated. The Family Court ought not have granted a decree for restitution of conjugal rights in favour of the wife without considering the entire evidence on record. Neither is the evidence considered by the Family Court nor is it discussed in detail. We are firmly of the view that the Family Court was not justified in granting a decree for restitution of conjugal rights.

14. Hence, for the reasons aforesaid, the Family Court Appeal is allowed. The judgment of the Family Court, dated 23.2.2010, is hereby set aside. The Hindu Marriage Petition filed by the respondent-wife for a decree of restitution of conjugal rights stands dismissed.

In the circumstances of the case, there shall be no order as to costs.

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