P B vs.p

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Court : Delhi

Decided On : Feb-26-2019

Appellant : P B

Respondent : P

Judgement :

$~1 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + P B P Date of Judgment:

26. 02.2019 MAT.APP.(F.C.) 54/2018 ..... Appellant Through: Mr.Ankit Mutreja, Mr.Aditya Agarwal and Mr.Zain Ahmed Advocate with along with appellant in person. versus ..... Respondent Through: Ms.A.Banerji, Advocate with respondent in person. (DHCLSC) CORAM: HON'BLE MR. JUSTICE G.S. SISTANI HON'BLE MS. JUSTICE JYOTI SINGH G.S. SISTANI, J.

(ORAL) 1. The present appeal under Section 19 of the Family Courts Act, 1984 has been filed by the appellant against the impugned judgment passed in a petition filed under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 dated 23.11.2017 by which the petition was dismissed. The marriage between the parties was solemnized on 07.05.2008. Out of their wedlock, a son was born on 25.03.2009, who is in the care and custody of the respondent/wife. MAT. APP (F.C.) No.54/2018 Page 1 of 13 2. The grounds on which the divorce was sought amongst others are that soon after the marriage, the respondent insisted that the property i.e. A-2/244B, Utsav Vihar, Karala, Delhi-110081 be transferred in her

name. On learning that the said property is in the name of mother of the appellant, she started forcing and torturing the mother for getting the property transferred in her name. The respondent/wife sought help from her brother who along with his friends tortured the mother of the appellant. The ailing mother of the appellant was ruthlessly beaten in order to get property transferred in her name. Being mentally tortured and distressed by the acts of the respondent, the mother of the appellant disowned the appellant, on 03.10.2009 by publishing the same in the newspaper. It is also alleged against the respondent that she had informed the appellant on many occasions that she was already in a relationship with a man, namely, Anil and would marry him after getting separated from the appellant. She also informed the appellant that she would give him divorce only when he (the appellant) would transfer the property in her name. The respondent had thrown dirty water at the place of worship. Life of his mother was made miserable and unsafe. Respondents brother started terrorizing the mother of the appellant. It is further submitted that the respondent forced the appellant into physical relationship and in case he resisted, she would beat him. It is submitted that the mother of the appellant received injuries when she was beaten by the respondent and her bother. Certificate was issued by Dr. Suman Arora on 07.09.2009 to the effect that she had swelling in her abdomen and bruises on her lower lip and also that she was malnourished. All facts stated above created mental MAT. APP (F.C.) No.54/2018 Page 2 of 13 and physical torture and on these grounds, a decree of divorce was sought.

3. The petition seeking divorce was contested by the respondent/wife, who denied all the allegations. She complained that she was not being given money for daily needs for herself and for her son. Her husband conspired to kill her. The allegations with respect to cruelty inflicted against the mother were denied. It was averred that the mother of the appellant was not residing at their house on 13.10.2009, when a specific allegation of beating was made. Her husband had abandoned her, forcing her to reside with her parents from 06.10.2009 onwards. Respondent/wife complained of lack of love, affection and care from the family members of the appellant even when she was pregnant. The appellant and his cousin brothers used unparliamentarily language and a demand of Rs.2 Lakhs was made and on refusal she was mercilessly beaten.

4. The appellant/husband appeared as witness PW1. He also examined his two sisters (PW2 Poonam and PW3 Pooja). The respondent examined herself as RW1. Relying on evidence on record, the Family Court reached a conclusion that case set up by the husband was uninspiring and unworthy of acceptance. The allegations of the wife wanting transfer of the ownership of the property remain unsubstantiated. Neither any specific instances of cruelty committed by the wife were brought out, nor any details of time, date and occasions been brought out in the evidence.

5. The Family Court was also not impressed by the testimony of PW1 that the wife along with her brother and some shady elements had MAT. APP (F.C.) No.54/2018 Page 3 of 13 threatened his mother and misbehaved and she died as a consequence thereof and observed that there were no instances that the wife and her brother attempted to use any criminal force, muscle power or tress-passed into the premises in question and in fact, the same was lying vacant after the death of the mother. The Family Court took note of the testimony of RW1 that she resided at Karala, with her son, only for few months, after 13.10.2009, but when the appellant/husband did not return back to matrimonial home, she left the premises and started residing with her parents. Reliance was also placed on the evidence that the house is lying vacant. The fact that the wife or her brother did not take advantage of the house being vacant, as they neither retained the actual physical possession nor re-entered, was considered by the Family Court in reaching a conclusion against the appellant. The Family Court was unimpressed and observed that making allegations that wife was having illicit relation and also questioning paternity of the child showed that the conduct of the husband was blameworthy and not conducive to conjugal relationship. It was observed that cooking up unbelievable story about their sexual relationship and branding the wife as a sexual addict was not supported with evidence. As per Family Court even on the alleged perverted sexual preference of the wife or similar allegations of sexual misconduct qua the mother nothing was put to RW1 during her cross-examination. The Family Court, thus, came to the conclusion that it was the appellant who was in the wrong and by granting divorce, he could not be permitted to take advantage of his own wrongs, in creating cracks and mistrust in the relationship. MAT. APP (F.C.) No.54/2018 Page 4 of 13 6. Learned counsel for the appellant has

submitted that the only ground which he wishes to urge before us today is based on the decision of the Supreme Court in case of Naveen Kohli vs. Neelu Kohli (2006) 4 SCC558 Strong reliance is placed on paragraphs 77 to 83 which we reproduce below:

77. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our minds that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

78. The High Court ought to have appreciated that there is no acceptable way in which the parties can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

79. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

80. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have MAT. APP (F.C.) No.54/2018 Page 5 of 13 been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned

lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

81. The High Court ought that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties. to have visualized 82. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

83. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the trial court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties. 7. It is submitted that the present case is also one of irretrievable breakdown of marriage. There is no chance of the parties coming back together. For the said proposition, reliance is placed on Rishikesh Sharma vs. Saroj Sharma, (2007) 2 SCC263 The relevant paras of the said judgment are reproduced below : MAT. APP (F.C.) No.54/2018 Page 6 of 13 4. We heard Mr. A.K. Chitale, learned Senior Counsel and Mr. S.S. Dahiya, learned Counsel for the respondent and perused the judgment passed by both the trial court and also of the High Court. It is not in dispute that the respondent is living separately from the year 1981. Though the finding has been rendered by the High Court that the wife last resided with her husband up to 25.3.1989, the said finding according to the learned Counsel for the appellant is not correct. In view of the several litigations between the parties it is not possible for her to prosecute criminal case against the husband and at the same time continue to reside with her husband. In the instant case the marriage is irretrievably broken down with no possibility of the parties living together again. Both the parties have crossed 49 years and living separately and working independently since 1981. There being a history of litigation with the respondent-

wife repeatedly filing criminal cases against the appellant which, could not be substantiated as found by the courts. This apart, only child born in the wedlock in 1975 has already been given such circumstances the High Court was not justified in refusing to exercise its jurisdiction in favour of the appellant. This apart, the wife also has made certain allegations against her husband, that the husband has already remarried and is living with another lady as stated by her in the written statement. The High Court also has not considered the allegations made by the respondent which, have been repeatedly made and repeatedly found baseless by the courts. in marriage. Under In our opinion, it will not be possible for the parties to live together and therefore there is no purpose in compelling both, the parties to live together. Therefore the best course in our opinion is to dissolve the marriage by passing a decree of divorce so that the parties who are litigating since 1981 and have lost valuable part of life can live peacefully for remaining part of their life. MAT. APP (F.C.) No.54/2018 Page 7 of 13 8.

5. During the last hearing both the husband and wife were present in the Court. Husband was ready and willing to pay a lump sum by way of permanent alimony to the wife. The wife was not willing to accept the lump sum but however expressed her willingness to live with her husband. We are of the opinion that her desire to live with her husband at this stage and at this distance of time is not genuine. Therefore, we are not accepting this suggestion made by the wife and reject the same. The appellant also relies on the observations of learned Single Judge of this court in the case Sandhya vs. Manish Kumar, 234 (2016) DLT381 The relevant paras are reproduced below: 20. The marriage took place on March 08, 2011 and by mid-July, 2011 i.e. in four months the couple had made a fair mess of themselves. From the incident of abortion the two trying to take advantage by painting the backdrop to the incident, as noted above, is an indication of the relations between the two being extremely strained from the very inception of their marriage. It is clear that the two were fighting each other from the beginning of their marital life and during the short period of four months the two have deliberately created problem for each other. The two have exaggerated every minute aspect which occurred in day to day life and were finding fault with each other. Both, by their conduct, aggravated the worsening situation. Senseless mental torture continued all through when the two cohabited for four months.

Tolerance, adjustments and respect to each other are totally absent. The marriage is a total wreck. Separated in mid-July, 2011 the two could not be reunited in spite of various efforts made for conciliation before the learned Judge, Family Court. Trained Counsellors could not help the couple salvage their marriage.

21. Though irretrievable breakdown of marriage is not a ground for divorce but in the judgments reported as 2006 (2) Mh.L.J.

307 Madhvi Ramesh Dudani v. Ramesh K. MAT. APP (F.C.) No.54/2018 Page 8 of 13 2007 (4) KHC Dudani, 807 Shrikumar V. Unnithan v. Manju K. Nair, (1994) 1 SCC337V. Bhagat vs. D. Bhagat and (2006) 4 SCC558Navin Kohli v. Neelu Kohli the concept of cruelty has been blended by the Courts with irretrievable breakdown of marriage. The ratio of law which emerged from said decisions is that where there is evidence that the husband and wife indulged in mutual bickering leading to remonstration and therefrom to the stage where they target each other mentally, insistence by one to retain the matrimonial bond would be a relevant factor to decide on the issue of cruelty, for the reason the obvious intention of said spouse would be to continue with the marriage not to enjoy the bliss thereof but to torment and traumatized each other. 9. In a case titled Sukhendu Das vs. Rita Mukherjee, AIR 2017 SC5092 the Supreme Court had held as under : 8. This Court in a series of judgments has exercised its inherent powers under Article 142 of the Constitution for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted [Manish Goel v. Rohini Goel].. Admittedly, the Appellant and the Respondent have been living separately for more than 17 years and it will not be possible for the parties to live together and there is no purpose in compelling the parties to live together in matrimony [Rishikesh Sharma v. Saroj Sharma].. The daughter of the Respondent is aged about 24 years and her custody is not in issue before us. In the peculiar facts of this case and in order to do complete justice between the parties, we allow the appeal in exercise of our power under Article 142 of the Constitution of India, 1950. the Appellant and MAT. APP (F.C.) No.54/2018 Page 9 of 13 10. Learned counsel for the respondent on the other hand submits that there is no infirmity in the order of the Family Court,

which would require interference by this court. She submits that the appellant has failed to prove the ground of cruelty which was urged by him. She submits that the respondent has all along taken a consistent stand that she does not wish to live separately from husband. All allegations of cruelty were denied by her.

11. Learned counsel for the respondent further submits that the judgments sought to be relied upon by the learned counsel for the appellant do not apply to the facts of the present case. It has been repeatedly held by the Apex Court that irretrievable breakdown of marriage is not a ground for divorce. Learned counsel further submits that the judgment sought to be relied upon pertain to extreme cases and the appellant cannot be rewarded for his own wrong. The respondent is a helpless lady and is bringing up her child as a single parent and thus the order of Family Court be upheld.

12. We have heard learned counsel for the parties and considered the rival contentions.

13. Strong reliance has been placed on the case of Naveen Kohli (supra). In this judgment, observation of Lord Denning, L.J.

made in the case of Kaslefsky v. Kaslefsky have been extracted. We reproduce the same as the same would be highly relevant not only for this case but is also to be kept in mind by the Family Court when the ground of irretrievable breakdown of marriage is urged and which is as under : MAT. APP (F.C.) No.54/2018 Page 10 of 13 If the door of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy pass to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperiled. 14. So far as, the case of Naveen Kohli (supra) is concerned, it pertains to upper strata of society. The husband was a man of means, who had constructed three factories with the intention of providing a separate factory for his three sons. A bungalow was also constructed. Children were sent to Public School at Nainital. Allegations were made that the wife was found in compromising position with one Biswas Rout and thereafter the parties started residing separately. Allegations were made against the wife that she had withdrawn large sum of money and property had

been transferred in her name. Various litigations were pending including a litigation before Company Law Board and in different courts. In fact, in Para 76 of the judgment, list was reproduced which included several cases filed by the wife against the husband.

15. In the case of Sukhendu Das (supra), the Apex Court considered a case where the husband had filed a petition seeking divorce, but where, post filing of the written statement, the respondent did not appear but the court found that the appellant did not make out a case for divorce, either. The Supreme Court took note of the fact in para 7 of this judgment that the respondent did not appear before the Trial Court, after filing of written statement, did not respond to the request made by High Court for personal appearance, and did not show any interest to appear before the Supreme Court. Staying away from all proceedings, refusal MAT. APP (F.C.) No.54/2018 Page 11 of 13 to participate in the proceedings for divorce and forcing the appellant to stay in dead marriage were factors which led the Supreme Court to reach a conclusion that for all practical purpose it was an irretrievable breakdown of marriage. In this backdrop, inherent power of Article 142 of Constitution of India was invoked.

16. Another judgment which was relied upon by the learned counsel for the appellant was in the case of Sandhya Kumari (supra). The court found as a matter of fact that relationship between the parties was extremely strained from the very inception of their marriage. They had deliberately created problems for each other and the two had exaggerated every minute aspect which occurred in their day to day life and found fault with each other. By their conduct, they aggravated their worsening situation. Tolerance, adjustments and respect to each other were completely missing, and marriage was totally broken down. Though irretrievable breakdown of marriage is not a ground for divorce but in the judgments Madhvi Ramesh Dudani vs. Ramesh K. Dudani, 2006 (2) Mh. L.J.

307; Shrikumar V. Unnithan vs. Manju K. Nair, 2007 (4) KHC80 Navin Kohli vs. Neelu Kohli, (2006) 4 SCC558 the concept of cruelty had been blended by the Courts with irretrievable breakdown of marriage, and a decree of divorce was granted.

17. Coming to the facts of the present case, where the Family Court has reached on a categorical finding that the appellant has failed to prove cruelty and the relief sought for decree of divorce has been declined coupled with the fact that this aspect of the judgment has not been pressed even today and the only ground urged is irretrievable breakdown of marriage, we are unable to accept the contention of the MAT. APP (F.C.) No.54/2018 Page 12 of 13 appellant that his case is covered by these judgments. Parties in this case belong to a middle income household. We are informed that the appellant is working in a private firm as a clerk. The respondent is a house wife. The instances with regard to cruelty, as rightly observed by the Family Court, are far flung. Some of the instances which have been pertaining to inflicting injuries on the mother including on her private parts; forcing the appellant to sexual acts and on his declining, beating him; the allegations of her brother using muscle power and bullying have remained unsubstantiated. The fact that after demise of her mother-in-law, the respondent did not re-enter the house, which she left voluntarily as her husband had left the matrimonial home without informing about his whereabouts and her categorical stand in her written statement that she did not want to part company with her husband and did not wish to separate, and even now declining the settlement by receiving money, would all show that in this case granting a decree of divorce on the ground that cruelty stands blended with irretrievable breakdown of marriage would be putting the problem away, and rewarding the husband for leaving his wife and their son who is nine years old.

18. We find no merit in the appeal and the same is, accordingly, dismissed with cost of Rs.10,000/- to be paid to the respondent. G.S.SISTANI, J.

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