

X Vs. Y

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Court : Supreme Court of India

Decided On : Jul-08-2024

Judge : Hon'Ble Mr. Justice Abhay S. Oka Hon'Ble Mr. Justice Augustine George Masih

Appeal No. : C.A. No.-007210-007210 - 2024

Appellant : X

Respondent : Y

Advocate for Pet/Ap. : RAKESH MISHRA ___

Judgement :

2024 INSC476NonReportable IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.7210 OF2024X Appellant versus Y Respondent

JUDGMENT

ABHAY S. OKA, J.

FACTUAL ASPECTS¹ This is an unfortunate case in which the appellant husband and respondentwife, notwithstanding continuous separation at least from 2008, have not been able to settle their matrimonial dispute. For the sake of privacy, we have masked their names.

2. The marriage between the parties was solemnised on 25th March 1999. Two children were born from the marriage. Both of them are adults. The matrimonial dispute led to multiple litigations. The matrimonial discord started in 2006, which led to the appellant filing a petition under Section 9 of the Hindu Marriage Act, 1955 (for short, HM Act) for restitution of conjugal rights. The petition was filed on Civil Appeal No.7210 of 2024 Page 1 of 12 17th December 2008. By the judgment and decree dated 15th May 2013, the learned Additional Civil Judge (Sr.Division), Barnala, passed a decree of restitution of conjugal rights under which the respondent was directed to join the appellant's company within three months. According to the case of the appellant, as the respondent did not abide by the decree for restitution of conjugal rights, on 23rd August 2013, the appellant filed a petition under Section 13 of the HM Act before the Family Court at Barnala seeking a decree of divorce on the grounds of cruelty and desertion. Being aggrieved by the decree for restitution of conjugal rights, in the year 2013 itself, the respondent preferred an appeal before the High Court of Punjab and Haryana. The appeal was dismissed by the judgment dated 19th February 2015, and the decree for restitution of conjugal rights was confirmed.

3. On 1st August 2016, the learned Judge of the Family Court at Barnala allowed the divorce petition filed by the appellant and dissolved the marriage between the appellant and respondent. The respondent challenged the divorce decree by preferring an appeal before the Punjab and Haryana High Court. By the impugned judgment dated 4th October 2019, the High Court has set aside the divorce decree.

4. There were two other litigations between the parties. The respondent filed a petition under Section 125 of the Code of Criminal Procedure, 1973, claiming maintenance against the appellant. On 19th October 2013, the said petition was partly Civil Appeal No.7210 of 2024 Page 2 of 12 allowed. The Trial Court denied maintenance to the respondent on the ground that the respondent had refused to live with the appellant without any sufficient cause. However, the Trial Court directed the appellant to pay maintenance at the rate of Rs.3500/ and Rs.4000/ per month respectively to the children. The respondent filed a complaint before the Court of the Judicial Magistrate alleging the commission of offences punishable

under Section 406 and 498A of the Indian Penal Code against the appellant. On 16th April 2014, the learned Magistrate dismissed the complaint. The respondent preferred a revision application against the order of dismissal of the complaint. The revision application was rejected by the order dated 18th October 2016 by the learned Additional Sessions Judge.

5. During the pendency of this appeal, the dispute was referred to the Supreme Court Mediation Centre. On 2nd August 2021, the learned Mediator submitted a failure report. Orders dated 22nd March and 6th May 2024 show that even this Court attempted to bring about a settlement. But the efforts could not succeed. SUBMISSIONS6 Shri Sukumar Pattjoshi, learned senior advocate appearing for the appellant, submitted that as the decree for restitution of conjugal rights was not abided by the respondent, a decree on the ground of desertion must follow. He submitted that consistent denial by the respondent to Civil Appeal No.7210 of 2024 Page 3 of 12 resume the matrimonial relationship caused mental cruelty to the appellant. Therefore, there was no reason for the High Court to disturb the decree of divorce.

7. Shri Sharma, learned counsel appearing for the respondent, submitted that after considering the evidence on record, the High Court found that the appellant failed to prove the grounds for divorce pleaded by him. He submitted that looking at the evidence on record, the findings recorded by the High Court cannot be disturbed. CONSIDERATION OF SUBMISSIONS8 We may note here that though an effort made by this Court to bring about a settlement did not succeed, the learned senior counsel appearing for the appellant, on instructions, stated that the appellants offer of payment of Rs. 30 lakhs as lumpsum maintenance or alimony to the respondent is still open subject to respondent agreeing for passing a decree of divorce.

9. There is no dispute that the parties have been residing separately since 2008. In IA No.109594 of 2024, filed by the appellant, he has stated that their son and daughter are major. The application records that the daughter resides in Canada and the son is in India. There is no dispute about this factual position.

10. As noted earlier, the appellant filed a petition for the restitution of conjugal rights in December 2008. The petition Civil Appeal No.7210 of 2024 Page 4 of 12 was decreed on 15th May 2013. The learned Additional Civil Judge (Sr.Division), Barnala, recorded the following findings in the judgment. 10. Thus, from the entire evidence adduced by the petitioner, it has been established on record that the respondent has left the company of the petitioner without any reason and cause and has neglected and deserted the petitioner. The petitioner has still love and affection with the respondent and is ready to keep her with him as his wife.. (emphasis added) The High Court dismissed the appeal preferred by the respondent and confirmed the decree for restitution of conjugal rights. In paragraph 10 of the decision, the High Court held thus: The trial court has rightly drawn the conclusion that the appellant had left the company of the respondent without any reasonable excuse and had neglected and deserted him as he was ready to keep her with him as his wife.. (emphasis added) The appeal was dismissed on 19th February 2015.

11. Thereafter, on 1st August 2016, the divorce petition filed by the appellant was decreed in which a finding was recorded that the appellant made every effort to bring back the respondentwife and despite the decree of restitution of conjugal rights, the respondent did not resume cohabitation. In the divorce petition filed by the appellant, he specifically Civil Appeal No.7210 of 2024 Page 5 of 12 relied upon the decree for restitution of conjugal rights passed against the respondent and stated that after the decree, the respondent had not resumed cohabitation. The Trial Court accepted the grounds of cruelty and desertion, and a decree of divorce was passed.

12. In the impugned judgment, while setting aside the decree of divorce, the High Court held that the ground of desertion was not made out as the appellant has continuously neglected his duties as a husband and considering his conduct, the respondent had no choice but to leave him and stay at her parental home.

13. In our view, it is not possible to sustain the judgment of the High Court on the issue of desertion. As mentioned earlier, on 15th May 2013, the Civil Court passed a decree for restitution of conjugal rights against the respondent on a petition filed

by the appellant in the year 2008. The categorical finding recorded by the Trial Court was that the respondent left the appellant's company without reasonable cause. The decree of the Trial Court was confirmed on 19th February 2015. The Family Court decreed the divorce petition filed by the appellant on 1st August 2016. Nothing was brought on record by the respondent to show that after 19th February 2015, when the decree for restitution of conjugal rights was confirmed by the High Court, any effort was made by her to resume cohabitation. We must note that between 1st August 2016, when a decree of divorce was passed, and 4th October 2019, when the decree was set aside Civil Appeal No.7210 of 2024 Page 6 of 12 by the impugned decree, no efforts were made by the respondent to resume cohabitation. She had not made out any such case. Moreover, there is no material on record to show that after the decree of restitution of conjugal rights was passed, the respondent showed even an inclination to resume cohabitation with the appellant. There is a concluded finding recorded by the Trial Court on 15th May 2013 while passing a decree of restitution of conjugal rights that it was the respondent who had deserted the appellant without sufficient cause.

14. Section 13(1) and 13(1A) of the HM Act read thus : 13. Divorce. Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party (i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or (ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or (ii) has ceased to be a Hindu by conversion to another religion; or (iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to Civil Appeal No.7210 of 2024 Page 7 of 12 such an extent that the petitioner cannot reasonably be expected to live with the respondent. Explanation. In this clause, (a) the expression mental disorder means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia; (b) the expression psychopathic disorder means a persistent disorder or disability of mind (whether or not including sub normality of intelligence) which results in abnormally

aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or (iv) (v) has been suffering from venereal disease in a communicable form; or (vi) has renounced the world by entering any religious order; or (vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; Explanation. In this subsection, the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and Civil Appeal No.7210 of 2024 Page 8 of 12 its grammatical variations and cognate expressions shall be construed accordingly.

(1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties. (emphasis added) We may note here that under Section 13(1A)(ii), it is provided that a divorce petition can be presented on the ground that there has been no restitution of conjugal rights between the parties to the marriage for a period of one year and more after passing the decree for restitution of conjugal rights. Indeed, the period of one year was not complete when the appellant filed the divorce petition. In the Judgment dated 15th May 2013 passed by the Trial Court, which was affirmed by the High Court, the Courts accepted the appellant's case that the continuous desertion was from December 2006. The decree was confirmed on 19th February 2015 by the High Court. Admittedly, the respondent did not resume the cohabitation Civil Appeal No.7210 of 2024 Page 9 of 12 after 15th May 2013 till the date of filing of the divorce petition. It is not her case that any event happened after the decree for restitution of conjugal rights was passed, which prevented her from joining the appellant's company. Hence, the desertion of the appellant at least from 2008 till the date of

filing the divorce petition in 2013 continued without any reasonable cause. Therefore, a decree for divorce on the ground of desertion under Section 13(1)(ib) ought to have been passed. Thus, in our view, the High Court ought to have confirmed the decree of divorce on the ground of desertion. This is a case of a complete breakdown of marriage for last 16 years and more.

15. The appellant has offered to pay the respondent a lump sum alimony of Rs. 30 lakhs. In the facts of the case, this amount is reasonable and can be accepted as a onetime lump sum alimony. Though we are passing a decree of divorce on the ground of desertion, we will have to clarify that the decree shall come into operation after a sum of Rs. 30 lakhs is paid to the respondent.

16. Hence, we pass the following order: a. The appeal is partly allowed by setting aside that part of the impugned judgment by which the High Court interfered with the decree for divorce on the ground of desertion. Accordingly, the marriage between the appellant and respondent, solemnised on 25th March 1999, is hereby dissolved by a decree of divorce Civil Appeal No.7210 of 2024 Page 10 of 12 under Section 13(1)(ib) of the HM Act. The finding of the High Court on the ground of cruelty is not disturbed; b. The decree passed as above shall come into force only on the appellant paying a sum of Rs. 30 lakhs to the respondent by directly transferring the amount to the respondent's account. We direct the advocate for the respondent to provide the bank account details of the respondent and a cancelled cheque of her account to the advocate for the appellant within three weeks from today. The appellant shall pay the sum of Rs. 30 lakhs to the respondent within a period of three months from today by direct transfer to the account of the respondent; c. The appellant shall file an affidavit before this Court immediately on making payment of Rs. 30 lakhs to the respondent, along with proof of payment. If the respondent does not furnish her bank account details within three weeks from today, it will be open for the appellant to deposit the said amount with this Court within three months from today. The deposit of the said amount with the Supreme Court shall also be treated as compliance, and immediately on the compliance being made, the decree of divorce shall become effective. The respondent will be entitled to withdraw the amount deposited in this Court; Civil Appeal No.7210 of 2024 Page 11 of 12 d. Registry shall immediately

draw a decree of divorce after the proof of payment or deposit of the amount of Rs.30 lakhs is filed on record; e. The payment of the sum of Rs.30 lakhs shall be in full and final settlement of the claim of the respondent for maintenance; and f. The appeal is, accordingly, partly allowed on the above terms with no order regarding costs. ..J.

(Abhay S. Oka)J.

(Ujjal Bhuyan) New Delhi; July 08, 2024. Civil Appeal No.7210 of 2024 Page 12 of 12

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