

Mina Verma Vs. Kirit Verma

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Court : Patna

Decided On : Aug-17-1998

Judge : P.K. Deb, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 13(1)

Appeal No. : Appeal from Original Decree No. 27 of 1988(R)

Appellant : Mina Verma

Respondent : Kirit Verma

Advocate for Def. : None

Advocate for Pet/Ap. : M.M. Banerjee and A. Sen, Advs.

Disposition : Appeal allowed

Judgement :

P.K. Deb, J.

1. This appeal has been preferred by the petitioner-appellantabovenamed under Section 28 of the Hindu Marriage Act against the -ex-partejudgment and order dated 11.11.1987 passed by the then Additional District Judge,7th Dhanbad in Title (Matrimonial) Suit No. 47 of 1985.

2. The facts in brief are that the petitioner-appellant was married to the respondent according to the Hindu rites and rituals on 13.12.1971, at Dhanbad and thereafter they started conjugal life. As per the contents of the divorce petition filed, from the very date of entering into the matrimonial life, the appellant was taken back when she found that her husband was a dead drunkard and was always treating the petitioner-appellant with cruelty. He was not having any sort of love and affection towards the petitioner but still being a Hindu wife she tried to get herself adjusted and to mend her life partner, but all her attempts proved futile. A female child was born in the wedlock in the year 1974 but then also the attitude of the respondent-husband did not change. He was not even ready to maintain wife and his own child. The petitioner being compelled learnt tailoring and started earning for her maintenance and also for her female child. With the thought of her being separated temporarily the respondent might have changed his attitude, she occasionally used to withdraw from the matrimonial home and stay at her parents' house. But on coming back also she found the situation unchanged, she became completely fed up with the cruelty being meted to her by her husband and as such in the compelling circumstances of not getting maintenance for her and her child, -she went to her father's house in the year 1985 and since then she was residing at her parents' house, till the filing of the divorce petition in the year 1985.

3. The divorce petition filed by the appellant was registered as Title (M) Suit No. 47 of 1985 and on being noticed, the respondent-husband put in appearance by filing Vakalatnama and took several adjournments for filing written statement, but ultimately he did not file so. Even he did not respond to the attempt of reconciliation between the spouses made by the trial Judge and ultimately the case was heard ex-parte and the appellant was examined as a sole witness in support of her contention. In her evidence, she has stated what she contended in her divorce petition, but the learned Court below after considering the evidence on record came to the finding that neither of the grounds for divorce as enumerated under Section 13 of the Hindu Marriage Act could come into play on the contents and evidence adduced by the appellant. In the impugned judgment and order the learned Court below held that the ground of desertion could not be proved as the petitioner had withdrawn herself from the matrimonial home. He has further held that the ground of cruelty could also not be proved as drunkardness per se cannot

be said to be a ground of cruelty.

4. In the appeal also, notices were served on the respondent but he preferred not to appear as he did so in the Court below. The learned Counsel for the appellant has submitted that the impugned judgment and order is against the principles of law as enunciated by various High Courts and the Supreme Court in the present day of modernisation. His further submission is that the learned Matrimonial Court only stuck to his conservative heels regarding the grounds of divorce.

5. I have carefully gone through the divorce petition and also the ex-parte evidence adduced by the appellant. The concept of divorce in the Hindu society came up for last few decades when the Society has been changed due to modernisation of the concept of marriage and living together. Even now like the European countries, the concept of living together without a marriage knot has become very much in existence in the Metropolitan cities. The Supreme Court in the case of *Reynold Rajmani v. Union of India*, has held that due to change of society and the mental development and ethical change of the marriage concept liberal views about the ground of divorce should always be taken. The ground of divorce as enumerated under Section 13 of the Hindu Marriage Act should be stretched and amplified to its last elasticity, if it could be found that the marriage knot between the spouses has already proved futile to give liberty to the spouses to live a free life. Conservative feelings for the known sacramental ethics attached to the Hindu marriage should not come in way in considering liberalisation of the grounds of divorce.

6. In the present case, both grounds of cruelty and desertion have been asserted from the side of the petitioner-appellant. It is true that drinking habit per se cannot be a ground of cruelty, but if such drunkardness creates unhappiness to the matrimonial home and the behaviour of drunkard spouse brings a feeling of faithlessness on the other spouse then the same should also be considered as a ground of cruelty. In the present case, it has been stated by the petitioner-appellant in her ex-parte evidence that since her marriage she found her husband who was a man of means was habituated in heavy drinking and because of drunkardness he was neglecting the wife and even after the birth of the child the

attitude did not change rather it was aggravated when the husband refused to maintain the wife and his female child. The wife tried her best to mend the attitude of her husband and for that reason she sometimes went out in her parents' house so that the other spouse because of loneliness could come to terms but the things did not change and ultimately out of frustration the petitioner had to leave the matrimonial home. Over and above the ground of cruelty, there is also a ground of desertion. The word desertion as appearing under Section 13 of the Hindu Marriage Act has got a different concept as that of its Dictionary meaning. It is true that in the case at hand the petitioner had herself withdrawn from the society of the respondent but such withdrawal was not at her own sweet will but because of the compelling circumstances and long frustration of a decade in the matrimonial relationship. So, desertion by giving its proper meaning should also impress the present case of the petitioner. It appears that the learned Matrimonial Court did not construe the matter in its proper sense. The husband-respondent did not contest the case, although he took several adjournments. By mat he had admitted the allegation brought against him. He even was not ready for reconciliation, although he has got a female child through the petitioner. This shows the attitude of the husband towards the poor wife, which can also be construed as a mental cruelty. She herself has stated that when she has not been paid maintenance and the schooling fees of her daughter, she started earning by tailoring and maintaining not only herself but also her daughter. The tuition fee has also not been contributed from the side of the husband.

7. From the above discussion, it is clear that the learned Court below has not considered the divorce petition and the evidence of the petitioner-appellant in their proper perspective and by sticking to the conservative views have dismissed the divorce petition. In the facts and circumstances, I find the present case to be a fit one where divorce should be granted to give liberty to the petitioner-appellant to live freely in the society without any hindrance or obligation towards the matrimonial home.

8. In the result, the appeal is hereby allowed. The impugned judgment and decree is hereby set aside and Title (Matrimonial) Suit No. 47 of 1985 is hereby allowed and the marriage knot between the appellant and respondent is hereby disrupted.

and the appellant shall be at liberty to live a free independent life.

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