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Court : Madhya Pradesh

Decided On : Jul-13-1991

Reported in : I(1992)DMC24

Judge : R.K. Verma, J.

Acts : Hindu Marriage Act, 1955 - Sections 13 and 24

Appeal No. : F.A. No. 43 of 1989

Appellant : Ramesh Chandra

Respondent : Padmabai

Advocate for Def. : Jai Singh, Adv.

Advocate for Pet/Ap. : S.M. Dgaonkar, Adv.

Disposition : Appeal dismissed

Judgement :

R.K. Verma, J.

1. This an appeal filed by the husband against the judgment and decree dated 29.3.1989 passed by the Ist Additional Judge to the Court of the District Judge, Dewas in civil Suit No. 6-A of 1988 whereby the appellants application under Section 12 of the Hindu Marriage Act has been dismissed.

2. The facts giving rise to this appeal, briefly stated, are as follows:

The appellant-applicant filed an application for divorce under section 13 of the Hindu Marriage Act on the ground of adultery. The appellant husband Ramesh chandra alleged that he was married to the respondent Padmabai on 17.6.75 in Shivpurkalan, District Morena, in accordance with Hindu rites and custom. After marriage Padmadai stayed for two days and then returned to her Parents. On 21.2.76 'Gaun' ceremony was performed and the husband Ramesh chandra took her to Ujjain on 23.2.76 where they lived together upto the 4th week end of March. Thereafter Padmabai went with her father to her parents house. In the first week of April, 1977 Padmabai came to live with the appellant-husband and returned with her father in the last week of April without the consent of the appellant. Then after a year on 2.5.78 a daughter was born to the respondent Padmabai. It is alleged that from April, 1977 till 2.5.78 the appellant had no access to his wife the respondent, which shows that the respondent had illicit connection with some other person.

3. It is further alleged by the appellant-applicant that on 21.9.82 the respondent-wife came to her in-laws with her daughter accompanied by her father and although the father of the respondent was asked to take back the respondent and her daughter, they were left behind at the appellant's place. The respondent stayed in an atmosphere of opposition. On 5.11.82 the appellant had left for Gwalior in connection with some work and on 8.11.1982 the father of the respondent came to Dewas and he and the respondent made complaint to the Collector and Sub-divisional Magistrate and submitted affidavits. There after the respondent returned with her father.

4. On 29.11.1982 the appellant husband filed the instant application for divorce.

5. According to the respondent's case in defence, she had stayed for 5-6 days with her in-laws immediately after her marriage. After the 'Gauna' ceremony the appellant's mother was ill and, therefore, the respondent's father had sent her alongwith her brother Dilip to her mother-in-law at Shivpurkalan. There the respondent served and nursed her Mother-in-law for one month and then returned to her parents. She stayed for four months with her husband after 'Gauna'

ceremony and then returned with her father with the permission of her husband.

6. It is alleged that on 17.3.1977 the respondent's father received a telegram from respondent's father-in-law asking him to send respondent Padmabai immediately. The respondent went to Ujjain and lived there for five months. Thereafter it was on 26.8.77, prior to Raksha Bandhan festival that the father of the respondent came to Ujjain to fetch her and the appellant went to her parent's place on the occasion of Raksha Bandhan. It is alleged that at that time she was pregnant. In the evening of 26.8.87, the respondent had been to her paternal aunt at Shivpuri where she fell sick and was shown to the doctor who informed the appellant's father about the pregnancy of the respondent. Accordingly, information was also sent to the in-laws of the respondents.

7. It was further alleged by the respondent that the appellant and the members of his family used it ill-treat the respondent being not satisfied with the dowry given to them on the occasion of marriage of the respondent. It is stated that the appellant and his father sent their family friend Ramcharanlal Sharma to Vijaypur for fetching the respondent with the message that the respondent should be get the past incidents and that the respondent will not be ill-treated or troubled. Upon such assurance the respondent with her daughter came to Dewas.

8. The respondent's father received a telegram from one peon of the excise Department at Dewas asking him to come to Dewas immediately. The respondent's father went to Dewas. The appellant was not present having gone to Gwalior. The appellant's father and other members of his family did not permit the respondent's father to meet the respondent and ill-treated him and the respondent's father also learnt that the respondent had been ill-treated and her hand had been broken. The appellant's father then met the collector and on the latter's intervansion the respondent was given in the custody of her father.

9. On the pleadings of the parties as aforesaid the learned Trial Court framed issues and recorded evidence of the parties and on appreciation of evidence adduced in the case recorded the findings as under:

----------Issues Findings----------1. Whether the respondent left the company Noof the petitioner in April, 1977?2. Whether the daughter was born to Yesrespondent on 2-5-78?3. Whether the respondent is living in adultery? No4. Whether the respondent has deserted thepetitioner without reasonable and sufficientcause for more than two years before thedate of the petition? No5. Relief and cost suit dismissedwith cost.----------

10. Accordingly, the appellant's application for divorce was dismissed. Being aggrieved by the judgment and decree of the learned lower Court the appellant-husband has filed this appeal.

11. The respondent received notice of this appeal on 18-6-90 and engaged Counsel who filed power in the case on 29-6-90. An application under Section 24 of the Act for maintenance during the pendency of this appeal and for litigation expenses was filed on 30-1-91 whereby the respondent claimed an amount of Rs. 800/- per month as maintenance for herself and her daughter and also claimed a sum of Rs. 1000/- as litigation expenses.

12. The only controversy raised in the arguments of the Counsel for parties is as to whether or not the pregnancy in respect of the daughter born to the respondent Padmabai on 2-5-1978 was attributable to the appellant husband.

13. The appellant applicant has examined himself as (P.W. 3) and has admitted in paragraph 21 of his statement that letter Ex. D/II was written by him in his own hand. This letter is addressed to the father of the respondent informing him that Padmabai's health condition was bad and that she was undergoing treatment but not recovering and that he should come urgently. The date of this letter is written as 7-8-77 at the top of the letter as also below the signature of the appellant at the bottom of the letter. The appellant has, however, denied that the figure '8' in the date 7-8-77 has not been written in his handwriting. The learned lower Court has not believed this statement of the appellant. The dated 7-8-77 in the letter of the appellant indicates that the respondent Padmabai was with the appellant on that date Dr. G.P. Kelkar of Ujjain has issued a certificate dated 23-8-77 (Ex. D/5)

certifying that Smt. Padmabai was under treatment from 20th August, 77 onwards and that she was suffering from pregonancy with vomiting. These documents corroborate and land credence to the statement of the respondent who examined herself as (DW-1) to the effect that she stayed with her husband till August, 1977 and left for her parent's place two days prior to the festival of Raksha Bandhan. It, therefore, follows that the respondent was pregnant when she left her husband's place in August since she delivered the child on 2-5-78 i.e. within a period of 9 months.

14. After hearing the learned Counsel and having considered the evidence on record I find no reason to differ with the finding of the learned lower Court that the respondent was not guilty of adultery.

15. Learned Counsel for the appellant has also submitted that the appellant is entitled to a decree for divorce on the ground of desertion, which the appellant had pleaded subsequently on 1-2-91 by way of amendment in his application for divorce. The application for divorce was filed on 29-11-82. It has been averred in the amended pleading that the respondent has been separately for over to years and there has been no conjugal relationship between the appellant and respondent during the last two years.

16. The appellant having filed the instent petition for divorce on 29.11.1982 alleging charge of adultery against the respondent wife, cannot be heard to say that he expected his wife to live with him during the pendency of the divorce petition in which the appellant had not withdrawn at any stage the charge of adultery aginst the wife. The appellant was in the circumstances himself guilty for constructive desertion and as such, he cannot get the benefit of his own wrong. The grouad of desertion for divorce against the respondent wife must, therefore, be negatived.

17. Learned Counsel for the respondent has pressed the application for maintenance pendente lite. The appellant, who was personally present in the Court, stated that he was holding the post of Revenue Inspector and was getting a salary of Rs. 2000/- per month. The respondent has claimed maintenance pendente lile of Rs. 800/- for her self and her daughter and in addition litigation

expenses of Rs. 1000/-. On a just and fair consideration, commensurate with the earning of the appellant I deem it fit to order and do hereby order that the appellant shall pay to the respondent through Court a monthly amount of Rs. 600/- as maintenance during the proceedings in this appeal i.e. from the date from which the respondent wife contested this appeal after service of notice of this appear till the date of this order and in addition a sum of Rs. 600/- as litigation expenses for defending this appeal. The respondent wife would be deemed to have contested the appeal from the time she was represented in this Court through Counsel who filed his Vakalatnama on her behalf in this appeal on 29-6-90. Thus, the period for which the respondent shall be entitled to get maintenance during the pendency of this appeal shall extend from 29-6-90 to this date of decision of this appeal. The appellant is directed to deposit in the lower Court the arrears of maintenance and litigation expenses accordingly for payment to the respondent within a period of one month from today.

18. With the above direction as to payment of maintenance during the pendency of this appeal and litigation expenses to be paid by the appellant to the respondent, this Appeal fails and is hereby dismissed with costs. Counsel fee Rs. 300/- if certified.

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