

Suneeta Vs. Rishabh Kumar Jain

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Court : Madhya Pradesh

Decided On : Oct-11-1991

Reported in : I(1992)DMC255

Judge : K.M. Agarwal, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9

Appeal No. : F.A.O. No. 245 of 1990

Appellant : Suneeta

Respondent : Rishabh Kumar Jain

Advocate for Def. : N.S. Ruprah, Adv.

Advocate for Pet/Ap. : P.S. Gothalwal, Adv.

Disposition : Petition dismissed

Judgement :

K.M. Agarwal, J.

1. Being aggrieved by dismissal of her petition for restitution of conjugal rights filed under Section 9 of the [Hindu Marriage Act, 1955](#), (in short, the 'Act'), the wife has presented this appeal under Section 28 of the Act.

2. It is not disputed that the appellant was married to the respondent on 15.2.1979, she conceived a child, but it was miscarried in September 1979 and she started living with her parents with effect from 1.10.1979. The respondent had filed a petition for divorce, which was dismissed on 7.7.1985 as he failed to produce his evidence. The appellant had also filed a petition for maintenance under Section 125 Cr. P.C. The present petition under Section 9 of the Act was filed on 13.11.1980 contending that without there being any reasonable cause, the appellant was forced to disassociate herself from the society of the respondent by persuading her parents to take her back on the pretext that after miscarriage, she had become weak and feeble. Usual allegations of dowry dissatisfaction and cruel treatment were made as a prologue to the strained relations. The respondent resisted the petition by denying the allegations made against him. According to him, the appellant came of a rich family and, therefore, she used to boast and ridicule the poverty of the respondent, which resulted in their strained relations. He also accused the appellant of having illicit relations with one Shamim. The Court below was pleased to dismiss the petition for restitution of conjugal rights on the ground that there was no possibility of reconciliation between the parties, or that of peaceful living as husband and wife. Being aggrieved, the wife has preferred this appeal.

3. Having heard the learned Counsel for the parties, I am of the view that there is absolutely no justification for separate living by the husband. Ex. D-20 is a letter written by the appellant, where she has made a confession of her illicit relations with one Shamim. According to the appellant, it was extorted from her, whereas according to the respondent, it was voluntary and left in his house in his absence by the appellant. No man on earth would believe that in ordinary circumstances, any lady would so shamelessly confess in writing her illicit relations with another man and leave it with her husband for being used in matrimonial proceedings. The defence was absurd and one has to appreciate the courage of the learned Counsel for the respondent, when he relies on such an absurd document while justifying separate living by the husband. There was no unreasonable delay in presentation of the petition for restitution of conjugal rights and the delay caused in disposal of the petition could not be made a foundation for defeating the petition by holding the appellant alone responsible for such delay. The delay in filing the

appeal was also of no consequence after it was condoned by the Court. Similarly failure to prove the allegations about dowry atrocities, or those of remarriage could not disentitle a party to claim restitution of conjugal rights. All these facts aside, the question remains, whether the appellant is entitled to a decree for restitution of conjugal rights. In *Alopbai v. Ramphal*, AIR 1962 M.P. 211; it was held that even when the conditions laid down in Section 9 of the Act for restitution of conjugal rights are satisfied, it is in the discretion of the Court whether or not to pass a decree for restitution of conjugal rights. 'The discretion given in passing a decree for restitution of conjugal rights has to be exercised very cautiously and after deliberation. After all, it is a very serious matter to pass a decree for restitution of conjugal rights and force a party to return to his or her conjugal home against the party's will.' It was further hold : --

'A decree for restitution of conjugal rights presupposes that the parties will make an endeavour to live together peacefully and happily. Where the circumstances of the case disclose that there is no possibility of the parties living together ever in a state of happiness, a decree for restitution of conjugal rights would be unjustified. In marital matters it is the attitude of the mind and the feelings that count and no decree of the Court can force the parties to live together. It is because of this that Section 23(2) provides that before granting any relief under the Act it shall be the duty of the Court in the first instance to make every endeavour to bring about a reconciliation between the parties. Section 23(1) also enjoins that in any proceedings under the Act, whether defended or not, if the Court is satisfied with regard to the points enumerated therein, then and then alone but not otherwise the Court shall decree the relief claimed.'

Tested on this standard and looked from the said angle, I find that the appellant is not entitled to a decree for restitution of conjugal rights. The marriage was performed on 15.2.1979 and just after a period of 7 1/2 months, the parties started living separately for one reason or the other, As the impugned judgment would show, the attempts to bring about reconciliation between them were frustrated. Proceedings for divorce and for maintenance were started either at the instance of the husband or at that of the wife. Various other circumstances leading to the strained relations between the parties would show that now there is even no

distant possibility of parties leading a harmonious or happy married life, if forced to live together. For all these reasons, it appears just and proper to refuse the relief under Section 9 of the Act for restitution of conjugal rights by upholding the decree passed by the Court below.

4. In the result, this appeal fails and it is hereby dismissed, but without any order as to costs.

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