

Uma Mittal Vs. Arvind Mittal

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Court : Madhya Pradesh

Decided On : Jan-07-2004

Reported in : II(2004)DMC43

Judge : A.K. Awasthy, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1) and 9; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 13

Appeal No. : First Appeal No. 556 of 2000

Appellant : Uma Mittal

Respondent : Arvind Mittal

Advocate for Def. : Subodh Abhyankar, Adv.

Advocate for Pet/Ap. : Achla Joshi, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Awasthy, J.

1. Appellant/defendant has filed this appeal under Section 28 of the Hindu Marriage Act against the judgment and decree dated 4.8.2000 passed in Hindu Marriage Case No. 23/99 by the learned IXth Additional District Judge, Indore of

dissolving the marriage under Section 13(1-a)(2) of the Hindu Marriage Act.

2. Admitted facts of the case are that the marriage in between the appellant and the respondent was solemnized at Indore according to the Hindu rites and customs on 22.5.1991 and from the wedlock they have a daughter, who born on 26.5.1992. It is also not in dispute that the appellant has filed Case No. 389/92 for dissolution of the marriage on the ground of cruelty and the Supreme Court has transferred this case to the Family Court at Amritsar and the suit was dismissed in default of appearance of the respondent/petitioner. It is also the common ground that the respondent/petitioner has filed the Case No. 193/97 for restitution of conjugal rights and an ex parte decree was passed on 9.1.1998 in favour of the respondent/petitioner. That after passing of the ex parte order dated 9.1.1998 the application for execution of the decree was filed by the respondent/petitioner and in that case the appellant has appeared and, thereafter, she has filed an application under Order 9 Rule 13, C.P.C. to set aside the ex parte judgment and decree dated 9.1.1998. It is also the common ground that the application filed by the appellant/defendant under Order 9 Rule 13, C.P.C. was dismissed. That the appellant/defendant has filed an application under Section 125, Cr.P.C. for her maintenance and the maintenance of her daughter and the amount of Rs. 900-p.m. was provided to the appellant/defendant.

3. The case of the petitioner is that after passing of the decree of restitution of conjugal rights under Section 9 of the Hindu Marriage Act in Case No. 193/97 on 9.1.1998 the appellant/defendant has not resumed the relationship even after one year of the passing of the impugned decree dated 9.1.1998, although the application of the execution was filed by the petitioner for directing the appellant/defendant to resume the relationship. That the decree of dissolution of marriage be passed in favour of the petitioner under Section 13(1-a)(2) of the Hindu Marriage Act.

4. The case of the defendant is that her husband was in habit of misbehaving and tutoring the defendant for satisfying his greed of dowry. That the defendant, had no knowledge of passing of the decree of restitution of conjugal rights dated 9.1.1998. That the defendant was willing and ready to resume the relationship

and, as such, the decree of dissolution of marriage should not be passed against her.

5. The learned Trial Court, after framing the issues, has examined the petitioner as P.W. 1 and the appellant/defendant as D.W. 1 and it was held that the appellant had the knowledge about passing of ex parte decree of restitution of conjugal rights and she has not resumed the relationship even after one year of the passing of the impugned decree the marriage between the parties is liable to be dissolved by a decree of divorce.

6. From Ex. P/5, copy of the execution filed by the respondent for restitution of conjugal rights it is clear that the appellant got the knowledge of the decree of dissolution of marriage on 11.3.1998 and, thereafter, she has appeared before the Executing Court. It is clear from Ex. P/8 that the appellant has filed an application for setting aside the ex parte decree dated 9.1.1998. The appellant/defendant as D.W. 1 has admitted that she has engaged Counsel Mr. Kishor Gupta to set aside the ex parte decree and she has got knowledge of ex parte decree on 11.3.1998. The application of the appellant for setting aside the ex parte decree was allowed and, thereafter, she has not complied with the decree of restitution of conjugal rights within one year of the passing of the decree,

7. In view of the fact that there is no resumption of cohabitation and there was no restitution of conjugal rights between the parties to the marriage for the period of one year after passing of the decree for restitution of conjugal rights, the petition for divorce was rightly allowed under Section 13(1-a)(2) of the Hindu Marriage Act.

8. The learned Trial Court has provided the permanent alimony of Rs. 3,000/- p.m. to the petitioner while granting the decree for divorce on the ground that the respondent is a Bank Officer and his total salary vide Pay Certificate (Ex. P/9) on 25.10.1999 was Rs. 11,180/-. The respondent has filed cross-objection challenging the quantum of the permanent alimony on the ground that the respondent is living with his parents and he is to bear his own expenses and the expenses of maintaining his old parents. It is admitted by the learned Counsel for the respondent that the respondent is still in service. Consequently, during last 4 years the respondent must be getting more pay than what he was getting on

25.10.1999. The appellant is living with the daughter of the respondent. Therefore, in view of the expenses required for the education of their daughter and looking to the status of the appellant and the respondent the monthly amount of maintenance of Rs. 3,000/- is not so high as to call for any interference.

9. The appeal is devoid of merit and is hereby dismissed. Parties to bear their own costs.

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