

Deepak Natkar Vs. Deepali Natkar

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Court : Madhya Pradesh

Decided On : Apr-08-1996

Reported in : II(1996)DMC506

Judge : A.R. Tiwari and ;N.K. Jain, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1) and 28

Appeal No. : L.P.A. No. 13 of 1992

Appellant : Deepak Natkar

Respondent : Deepali Natkar

Advocate for Def. : K.K. Wagh, Adv.

Advocate for Pet/Ap. : J.W. Mahajan, Adv.

Judgement :

A.R. Tiwari, J.

1. The unsuccessful husband in two Courts below has filed this Letters Patent Appeal under Clause X of the Letters Patent impugning the order dated 27.4.1992 passed by the learned Single Judge of this Court in First Appeal No. 140 of 1989.

2. Facts lie in a narrow compass. The appellant presented a petition under Section 13(1)(ia) and (ib) of the [Hindu Marriage Act, 1955](#) (for short 'the Act') on 1.12.1987

in the Court of District Judge, Shajapur for dissolution of marriage by decree of divorce. The marriage had taken place according to Hindu rites in the year 1980 and from this wedlock, they have a daughter. The respondent disputed the allegations. The Trial Court on appreciation of the evidence found that the allegations of cruelty and desertion were not established and dismissed the petition, registered as Hindu Marriage Case No. 1 of 1989 on 1.8.1989. Dissatisfied, the husband filed the First Appeal under Section 28 of the Act against the order of refusal to grant decree of dissolution of marriage by divorce. The learned Single Judge on re-appreciation of the entire evidential material and consideration of the legal position found that appeal had no merit and dismissed the same on 27.4.1992. Still dissatisfied, the husband has filed this Letters Patent Appeal.

3. We have heard Mr. J.W. Mahajan, learned Counsel for the appellant and Ku. K.K. Wagh, learned Counsel for the respondent.

4. The learned Single Judge concluded as under :

'Therefore, considering the overall evidence, the cumulative effect of all the circumstances and the conduct of the parties, the petitioner has not proved the acts complained of. As rightly contended by the Counsel for the respondent, relying on the Apex Court's decision in *Madhusudandas v. Narayani Bai*, AIR 1983 SC 114, on preponderance of probabilities the charges of 'cruelty' and 'desertion' have not been made out for dissolution of the marriage by a decree of divorce and, therefore, no interference is called for in appeal, as the findings are not unreasonable or perverse.'

5. Nothing substantial is urged to show any invalidity or infirmity. The appellant has challenged the conclusion which is based on appreciation of facts. Finding is concurrent and is not shown to be perverse in any manner.

6. The findings, unimpeachable on evidence, are concurrent. Following the decision rendered in ILR 1948 Nagpur 203, *Tulsiram and Anr. v. Badriprasad*, the Division Bench of this Court held in 1964 M.P.L.J. 114 N, *Shymlal Mishra v. Padmavati*, that:

'In a Letters Patent Appeal, a concurrent finding of fact cannot be disturbed.'

7. In a later decision too, this Court in 1977 W.N. 1562 (DB), *Kalicharan Shukla v. State of M.P. and Ors.*, held as under :

'Thus, the finding that the appellant acted with gross negligence arrived at by the learned Single Judge, with which this Court agrees, is purely a finding of fact which cannot be made a subject of challenge in the present appeal. Appeal dismissed.'

8. The Court, acting reasonably and judiciously, has to assess the justness of the cause, as presented, and to adjudge as to who has wronged and who is wronged. Lord Wright pulled the blinkers off our eyes when he once elegantly observed :

'The truth is that the Court decides the question in accordance with what seems to be just or reasonable in its eyes. The Judge finds in himself the criterion of what is reasonable'.

9. After consideration of the submissions urged before us, we find that the judgment passed by the first Appellate Court, upholding the conclusion of the trial Judge, is non-interferable and as such this appeal deserve the fate of dismissal.

10. The parties should not permit the wedlock to become the deadlock and should show the courage to sustain normal wear and tear of life. There should be serious efforts to maintain the conjugal rights.

11. Ex consequenti, we dismiss this Letters Patent Appeal but without any order as to costs.

12. Counsel fee for each side is, however, fixed at Rs. 750/-, if certified.

13. Record shall now be returned.