

Sameeran Roy Vs. Smt. Leena Roy

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Court : Madhya Pradesh

Decided On : Jun-19-2000

Reported in : 2000(4)MPHT269

Judge : Dipak Misra, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13, 13(1), 21 and 23A; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rule 6, 6A and 6A(1)

Appeal No. : Civil Revision No. 652/2000

Appellant : Sameeran Roy

Respondent : Smt. Leena Roy

Advocate for Def. : Girish Shrivastava, Adv.

Advocate for Pet/Ap. : A.K. Jain, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Dipak Misra, J.

1. Marriage has a different concept in Hindu religion and philosophy. It is a sacrament and not a contract. Two souls unite into one and a complete whole is

created. The union of two hearts makes marriage a success. A successful marriage is built upon the infrastructure of mutual trust, respect, love, sacrifice and service. Once this infrastructure is shaken or dwindled the equilibrium is disturbed and the relationship between spouses results into one of misery and gives rise to inferior endowments of nature. The private secrets become public and abuses are hurled in law Courts. Tie and the bond become weaker day by day and the protagonists behave as characters of a drama full of emotions which are some times uncontrollable. The case at hand depicts a picture of perverse anger and an attempt to slap the other at the most delicate spot. The couple have converted the Court room to a stage and conceived of dialogues according to their insensitive feelings. The scene is quite unpleasant.

2. To begin the narration of the case which, involves an interesting point of law, apart from facts, is as follows :

The non-applicant/wife filed an application under Section 13 of the [Hindu Marriage Act, 1955](#) (hereinafter referred to as 'the Act') seeking divorce on the ground that the applicant-husband is impotent and could not have sexual intercourse with the non-applicant and this amounted to cruelty after marriage. On this ground a decree for divorce was sought for. Various instances were narrated expositing the sexual incapacity of the applicant-husband herein. The revisionist filed his written statement before the learned trial Judge and therein made a counter claim for grant of damages to the tune of Rs. 10 lacs for defaming him and causing mental harassment and cruelty.

3. The plea with regard to counter-claim was resisted by the wife/non-applicant on the ground that the same was not maintainable in a proceeding instituted under the Act. The learned Fourth Additional District Judge, Jabalpur before whom the matter was pending came to hold that the counterclaim as putforth by the husband was not covered within the ambit and sweep of Order 8 Rule 6-A of the Code of Civil Procedure (in short 'the Code') but was covered under Section 23A of the Act. Being of this opinion he rejected the counter-claim. The said order is the cause of grievance of the applicant-husband.

4. I have heard Mr. A.K. Jain, learned counsel for the applicant and Mr. Girish Shrivastava, learned counsel for the non-applicant.

Mr. Jain has contended that a defendant can claim any right by way of counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action on the basis of which the plaintiff has built up his case. It is his submission that Sub-rule (1) of Rule 6-A of the Code is of wide magnitude and would cover the counter-claim of this nature in its spectrum. To buttress his submission he has placed reliance on the decisions rendered in the cases of Gurbachan Singh v. Bhag Singh and Ors., AIR 1996 SC 1087 and Jag Mohan Chawla and Anr. v. Dera Radha Swami Satsang and Ors., AIR 1996 SC 2222.

Combating the aforesaid submission Mr. Girish Shrivastava, learned counsel for the non-applicant has contended that the Act is a special Statute and there is special provision under Section 23A of the Act dealing with counter-claim and, therefore, the counter-claim would not be governed by the principles enshrined under Order 8 Rule 6-A of the Code. It is also his submission that the wife/non-applicant had taken a statutory ground seeking divorce and if a counter-claim for damages is entertained that will be totally beyond the scope of application and rightly the learned trial Judge has negatived the plea of the husband with regard to the counter-claim.

5. To appreciate the rival submissions raised at the Bar, it is apposite to refer to Section 13(1) of the Act. It reads as under :

'13. Divorce.-- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented either by the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--

(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation : In this clause--

(a) the expression 'mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and include schizophrenia;

(b) the expression 'psychopathic disorder' means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment; or

(iv) has been suffering from a virulent and incurable form of leprosy; or

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

Explanation : In this sub-section, the expression 'desertion' means the desertion of the petitioners by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.'

The wife/non-applicant has based her claim under 13 (1) (i-a) of the Act. Thus, she has asseverated a statutory ground to obtain a decree for divorce. In this context, I

may profitably refer to Order 8 Rule 6-A of the Code. It reads as under :

'6-A. Counter-claim by defendant.-- (1) A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not :

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.'

While interpreting the aforesaid provision in the case of Gurbachan Singh (supra) the Apex Court opined as under :

'3. It is true that Rule 6-A (a) was introduced by Amendment Act, 1976. Preceding the amendment, it was settled law that except in a money claim, counter-claim or set off cannot be set up in other suits. The Law Commission of India had recommended, to avoid multiplicity of the proceedings, right to the defendants to raise the plea of set off in addition to a counter-claim in Rule 6 in the same suit irrespective of the fact whether the cause of action for counterclaim or set off had accrued to defendant either before or after the filing of the suit. The limitation was that the counter-claim or set off must be pleaded by way of defence in the written statement or before the time limit for delivering the written statement has expired, whether such counter-claim is in the nature of a claim for a claim for damages or not. Further limitation was that the counterclaim should not exceed the pecuniary

limits of the jurisdiction of the Court. In other words, by laying the counter-claim pecuniary jurisdiction of the Court cannot be divested and the power to try the suit already entertained cannot be taken away by accepting the counter-claim beyond its pecuniary jurisdiction. Thus, considered, we hold that in a suit for injunction, the counter-claim for possession also could be entertained by operation or Order 8 Rule 6 (A) (1) of CPC.'

6. In the case of Jag Mohan (supra) the Apex Court expressed the view as under :

'In a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable. A defendant can claim any right by way of a counter claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. In Sub-rule (1) of 6-A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject-matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action on the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words 'any right or claim in respect of a cause of action accruing with the defendant' would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff.'

(Quoted from the placitum)

7. Mr. Jain, learned counsel for the applicant has pressed into service the ratio laid down in both the decisions to highlight that the counter-claim for damages is maintainable. In the case of Gurbachan Singh (supra) the Apex Court was dealing with a suit for injunction where a counter-claim for possession was made by the defendant. In the case of Jag Mohan Chawla (supra) the Apex Court ruled that in a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable. I may humbly state here that the suits were quite different with which the Apex Court dealt. The present proceeding is one under Section 13(1) of the Act and it is in essence, an application seeking divorce on the basis of

a statutory ground.

8. At this juncture, I may profitably refer to Section 21 of the Act. It reads as under :

'21. Application of Act 5 of 1908.-- Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.'

The aforesaid provision makes it luminously clear that the proceeding under the Act shall be regulated as far as may be the Code of Civil Procedure, 1908. Thus, this section clearly indicates that to an application under Section 13 of the Act the Code of Civil Procedure does not automatically apply. The applicability of Code of Civil Procedure has been hedged by two conditions, namely, subject to other provisions of the Act and subject to the Rules framed by the High Court. That apart, the terms 'as far as may be' have also to be given its due prominence. Thus, it is apparent that if any provision is in existence under the Act it would oust the application of the provisions of the Code of Civil Procedure. In this context, Section 23A of the Act assumes significance. The provision reads as under :

'23-A. Relief for respondent in divorce and other proceedings.--In any proceedings for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on the ground, and if the petitioner's adultery, cruelty or desertion is proved the Court may give to the respondent any relief if he or she had presented a petition seeking such relief on that ground.'

On a fair reading of the aforesaid provision it is graphically clear that a special provision of this nature provides for counter-claim in respect of a divorce petition. Thus, provision of Order 8 Rule 6-A of the Code shall not be applicable, in view of the provisions enshrined under Section 23A of the Act.

9. From the aforesaid discussion it is perceivable that grant of damages for defamation is not a relief available under this Act. It is to be borne in mind, this is a special Statute and special provisions have been engrafted for divorce, dissolution of marriage, restitution of marriage and such other relief. Section 23A of the Act is a special provision. Hence, that would have the full play and the claim for damages for defamation under the Code would not be attracted. Hence, I am of the considered view that the decisions rendered in the aforesaid cases are distinguishable and not applicable to the present case.

10. Accordingly, I do not find any jurisdictional error in the order passed by the learned trial Judge or any material irregularity in exercise of jurisdiction.

11. In the result, the Civil Revision, being sans merit, stands dismissed without any order as to costs.