

Harish Chandra Singh Chilwal Vs. Pushpa

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Court : Uttaranchal

Decided On : Jul-24-2008

Reported in : II(2008)DMC454

Judge : Prafulla C. Pant and; Dharam Veer, JJ.

Appellant : Harish Chandra Singh Chilwal

Respondent : Pushpa

Disposition : Appeal dismissed

Judgement :

Prafulla C. Pant, J.

1. This appeal, preferred under Section 19 of Family Courts Act 1984, is directed against the judgment and order dated 11.9.2007, passed by Principal Judge, Family Court, whereby petitioner/ appellant's Divorce Petition No. 56 of 2003, under Section 13 of Hindu Marriage Act, 1955, is dismissed by said Court.

Heard learned Counsel for the parties and perused the lower Court record.

2. Brief facts of the case are that both the parties are Hindus. Petitioner-Harish Chandra Singh Chilwal, got married to respondent Smt. Pushpa, on 23.2.1993, at Ramnager, according to Hindu rites. After the marriage, for sometimes the couple lived peacefully but thereafter they started quarrelling. Out of the wedlock, two

daughters were born, who are now grown up. The petitioner/appellant's case is that respondent used to insult him by saying that his practice as an Advocate is poor and he is living as a dependent on his family. She used to taunt him by saying that she earns more than her husband. It is further alleged that she used to insist her husband (present petitioner/appellant) to get separated from his joint family. Agreeing to demand, the petitioner started living with his wife in a rented accommodation. It is further alleged in the divorce petition that respondent used to go to her parents house too frequently. It is further alleged that respondent insulted the petitioner's mother and committed cruelty against the petitioner and his family. Finally, in the year 2002, she left the house of the petitioner. The petitioner has further alleged that petitioner is regularly sending amount of maintenance for children, who are living with his wife. It is further stated that petitioner herself is earning member and is teaching in a school.

3. The respondent contested the petition of divorce but admitted having got married to the petitioner on 23.2.1993, as stated in the divorce petition. She denied that she insulted her husband or committed any cruelty against him. She further pleaded that it is her husband (present petitioner/ appellant), who treated the respondent with cruelty and negligence.

4. On the basis of the pleadings of the parties, the Trial Court framed following three issues:

1. Whether the respondent treated the petitioner with cruelty, after their marriage?
 2. Whether the petitioner is entitled to decree of divorce under Section 13 of Hindu Marriage Act, 1955, on the ground of cruelty?
 3. To what relief, if any, the petitioner is entitled?
5. Both the parties adduced their oral and documentary evidence before the Trial Court. The Trial Court after hearing the parties and discussing the evidence, dismissed the petition with the findings that respondent has not treated the petitioner with cruelty. Hence this appeal before this Court.

6. Learned Counsel for the appellant argued that the Trial Court has not appreciated the evidence on record properly and finding recorded by it is erroneous in law. We have re-appreciated the evidence on record, adduced by the parties.

7. Admittedly, the respondent was married to the petitioner on 23.2.1993, at Ramnagar, according to Hindu rites. The dispute between the parties is as to the fact whether the respondent treated the petitioner (present appellant) with cruelty or not. The most important statement on the record is that of petitioner himself, who was got examined as P.W. 1 Harish Chandra Chilwal. On going through his statement, we found that he has stated on oath that respondent treated him with cruelty. It is further stated by P.W. 1 Harish Chandra Chilwal that his wife used to insult him by saying that his practice is poor and he is living as dependent on his family. It is further stated by him that she used to say that she earns more than her husband. Learned Counsel for the appellant argued that this kind of utterance from wife caused mental cruelty against him, as he used to feel insulted time and again. Not only this, our attention is also drawn to further averments made in the statement of P.W. 1 Harish Chandra Chilwal. In his examination, he further states that when the outsiders used to come to his house, his wife used to use insulting words against him in their presence. Apart from this, the most important incident narrated by P.W. 1 Harish Chandra Chilwal is that when once his mother went to the room of his wife, she said ('Hindi matter omitted') (Old woman! why did you enter in my room without my permission. When my mother told her to behave, she assaulted my mother and dragged her to ground floor and made her unclothed). The aforesaid incident does constitute clear case of cruelty committed by wife against her husband. The Trial Court has committed error of law in ignoring the strong evidence adduced by the petitioner. The statement of the petitioner is corroborated by P.W. 2 Indra Chilwal (mother of the petitioner) and other witnesses examined on his behalf.

8. Though D.W. 1 Pushpa has denied the allegations of cruelty and it is alleged that her husband is a drunkard, and he used to beat her, but merely for that reason the conduct of the wife, as narrated above, cannot be said to be justified. We have also gone through the statement of D.W. 2 Chandra Shekhar Palariya,

owner of the house, in which petitioner and respondent used to live in a rented accommodation and the one of D.W. 3 Soban Singh Khetwal. The evidence of outsiders is not of much relevance in the case of matrimonial dispute, as it is only the parties to the matrimony and insiders who know what had happened with them inside the house.

9. For the reasons as discussed above, we are of the view that the Trial Court has erred in law in dismissing the petition under Section 13 of Hindu Marriage Act, 1955. From the evidence on record, the petitioner has clearly made out a case of divorce on the ground of cruelty. However, we are conscious of the fact that two daughters of the petitioner are living with the respondent, who are now grown up. Though some amount of maintenance is being paid by the petitioner but still they will be getting married at the marriageable age and the wife even if she is earning member would require sufficient amount for the marriage of two daughters.

10. Keeping all the facts and circumstances in mind, we are of the view that the divorce petition should be allowed only if the petitioner pays Rs. 10,00,000 (Ten lacs) as lump sum alimony to his wife Pushpa.

11. Therefore, the appeal is/dismissed. The judgment and order dated 11.9.2007, passed by Principal Judge, Family Court, Nainital, in divorce petition No. 56 of 2003, is set aside. Divorce petition is allowed and the marriage between the parties is dissolved subject to the condition that the petitioner shall pay Rs. 10,00,000 (Ten lacs) as lump sum alimony to the respondent within a period of three months from today. In case of default in payment of alimony, the appeal and divorce petition shall stand dismissed.