Dharmendra Kumar Vs. Usha Kumar

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Court : Supreme Court of India

Decided On : Aug-19-1977

Reported in : AIR1977SC2218; (1977)4SCC12; [1978]1SCR315; 1977(9)LC568(SC)

Judge : A.C. Gupta and; S. Murtaza Fazal Ali, JJ.

Acts : Hindu Marriage Act, 1955 - Sections 13(1A) and 23(1); Hindu Marriage (Amendment) Act, 1964 - Sections 2

Appeal No. : Civil Appeal No. 949 of 1977

Appellant : Dharmendra Kumar

Respondent : Usha Kumar

Advocate for Def. : S.L. Watel, ; C.R. Samasekharan, ; R. Watel and ;

Advocate for Pet/Ap. : Naunit Lal,; R.K. Baweja and; Lalita Kohli, Advs

Prior history : Appeal by special Leave From the Judgment and Order dated October 19, 1976 of the Delhi High Court in F.A.O. 170 of 1976

Judgement :

A.C. Gupta, J.

1. On her application made under Section 9 of the Hindu Marriage Act, 1955, the respondent was granted a decree for restitution of conjugal rights by the Additional Senior Sub-Judge, Delhi on August 27, 1973. A little over two years after that decree was passed, on October 28, 1975 she presented a petition under Section 13(1A)(ii) of he Act in the Court of:he Additional District Judge, Delhi, for the dissolution of the marriage by a decree of divorce. Section 13(1A)(ii) as it stood at the material time reads:

Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition the dissolution of tha marriage by a decree of divorce on the ground-

(i) x x x

(ii) that there has been no restitution or' conjugal rights as between the parties to the marriage for a period of two year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

The provision was amended in 1976 reducing the period of two years to one year, but this amendment is not relevant to the present controversy. In the petition under Section 13(lA)(ii) she-we shall hereinafter refer to her as the petitioner stated that there had been no restitution of conjugal rights between the parties to the marriage alter the passing of the decree for restitution of conjugal rights and that there was no other legal ground why the relief prayed for should not be granted. Her husband, the appellant before us, in his written statement admitted that there had been no restitution of conjugal rights between the parties after the passing of the decree in the earlier proceeding, but stated that he made attempts 'to comply with the decree (for restitution of conjugal rights) by writing several registered letters to the petitioner' and 'otherwise' inviting her to live with him. He complained that the petitioner 'refused to receive some of the letters and never replied to those which she received' and according to him the petitioner 'has herself prevented the restitution of conjugal rights she prayed for and new seeks to make a capital out of her own wrong'. The objection taken in the written statement is apparently based on Section 23(1)(a) of the Act. The relevant part of Section 23(1)(a) states:

Decree in proceedings.

23. (1) In any proceeding under this Act, whether defended or not, if the court is satisfied that-

(a) any of the grounds for granting relief exists and the petitioner...is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief....

On the pleadings the following issue was raised as issue No. 1:

Whether the petitioner is not in any way taking advantage of her own wrong for the reasons given in the written statement ?

2. Subsequently the following additional issue was also framed:

Whether the objection covered by issue No. 1 is open to the respondent under the law ?

This additional issue was heard as a preliminary issue. The Additional District Judge, Delhi, who heard the matter, relying on a Full Bench decision of the Delhi High Court reported in I.L.R. (1971) Del 6, (Ram Kali v. Gopal Dass) and a later decision of a learned single Judge of that court reported in I.L.R. (1976) 1 Del 725, (Gajna Devi v. Purshotam Giri) held that no such circumstance has been alleged in the instant case from which it could be said that the petitioner was trying to take advantage of her own wrong and, therefore, the objection covered by issue No. 1 was not available to the respondent The Additional District Judge accordingly allowed the petition and granted the petitioner a decree of divorce as prayed for. An appeal from this decision taken by the husband was summarily dismissed by the Delhi High Court. In the present appeal the husband questions the validity of the decree of divorce granted in favour of the petitioner.

3. Section 13(1A)(ii) of the Hindu Marriage Act, 1955 allows either party to a marriage to present a petition for the dissolution of the marriage by a decree of divorce on the ground that there has been no restitution of conjugal rights as between the parties to the marriage for the period specified in the provision after

the passing of the decree for restitution of conjugal rights. Sub-section (1A) was introduced in Section 13 by Section 2 of the Hindu Marriage (Amendment) Act, 1964 (44 of 1964). Section 13 as it stood before the 1964 amendment permitted only the spouse who had obtained the decree for restitution of conjugal rights to apply for relief by way of divorce; the party against whom the decree was passed was not given that right. The grounds for granting relief under Section 13 including Sub-section (1 A) however continue to be subject to the provisions of Section 23 of the Act. We have quoted above the part of Section 23 relevant for the present purpose. It is contended by the appellant that the allegation made in his written statement that the conduct of the petitioner in not responding to his invitations to live with him meant that she was trying to take advantage of her own wrong for the purpose of relief under Section 13(1A)(ii) On the admitted facts, the petitioner was undoubtedly entitled to ask for a decree of divorce. Would the allegation, if true, that she did not respond to her husband's invitation to come and live with him disentitle her to the relief We do not find it possible to hold that it would. In Ram Kali's case (supra) a Full Bench of the Delhi High Court held that mere non-compliance with the decree for restitution does not constitute a wrong within the meaning of Section 23(1)(a). Reiving on and explaining this decision in the later case of Gajna Devi v. 'Purshotam Giri (supra) a learned Judge of the same High Court observed:

Section 23 existed in the statute book prior to the insertion of Section 13(1A)....Had Parliament intended that a party which is guilty of a matrimonial offence and against which a decree for judicial separation or restitution of conjugal rights had been passed, was in view of Section 23 of the Act, not entitled to obtain divorce, then it would have inserted an exception to Section 13(1A) and with such exception, the provision of Section 13(1A) would practically become redundant as the guilty party could never reap benefit of obtaining divorce, while the innocent party was entitled to obtain it even under the statute as it was before the amendment. Section 23 of the Act, therefore, cannot be construed so as to make the effect of amendment of the law by insertion of Section 13(1A) nugatory..the expression 'Petitioner is not in any way taking advantage of his or her own wrong' occurring in Clause (a) of Section 23(1) of the Act does not apply to taking advantage of the statutory right to obtain dissolution of marriage which has been

conferred on him by Section 13(1A).. In such a case, a party is not taking advantage of his own wrong, but of the legal right following upon of the passing of the decree and the failure of the parties to comply with the decree....

In our opinion the law has been stated correctly in Ram Kali v. Gopal Das (supra) and Gajna Devi v. Purshotam Giri (supra). Therefore, it would not be very reasonable to think that the relief which is available to the spouse against whom a decree for restitution has been passed, should be denied to the one who does not insist on compliance with the decree passed in his or her favour. In order to be a 'wrong' within the meaning of Section 23(1)(a) the conduct alleged has to be something more than a mere disinclination to agree to an offer of reunion, it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled.

4. In the case before us the only allegation made in the written statement is that the petitioner refused to receive or reply to the letters written by the appellant and did not respond to his other attempts to make her agree to live with him. This allegation, even if true, does not amount to misconduct grave enough to disentitle the petitioner to the relief she has asked for. The appeal is therefore dismissed but without any order as to costs.