

Nirmala Vs. Vasdev Pardasani

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Court : Delhi

Decided On : Aug-09-1977

Reported in : 1978RLR97

Judge : Rajindar Sachar, J.

Acts : Hindu Marriage Act - Sections 10

Appeal No. : First Appeal No. 32 of 1977

Appellant : Nirmala

Respondent : Vasdev Pardasani

Advocate for Pet/Ap. : B.D. Sharma and; R.P. Sharma, Advs

Judgement :

Rajindar Sachar, J.

(1) (PARTIES were married on 14.11.60 and lived together for a month. Wife returned in Oct., , and again left in May, 62. Then she returned after 7 years in 1969 and stayed for 2 years and left again in Nov., 71 and never returned thereafter. Husband sued her and trial Court upheld his plea of desertion for more than 2 years. Wife appealed to High Court.) The judgment, para 8 onwards is :

(2) There is no evidence to show that there was anything in the conduct of the husband which prevented her from joining the matrimonial home. There is no suggestion by her that it was any other apprehension which prevented her from going back to her husband's home. The only reason given was that it was a matter of prestige because husband did not come to take her back. In this connection one should bear in mind that the husband had gone in 1961 and 1969 to bring back the wife; it cannot be thus said that the husband had deliberately made it a point not to bring her back. Evidently this time he felt that if she wanted to make the matrimonial home run she should come back, because it was not at his instance that she had gone away. It is in this context that the long absence from 1962 to 1969 by the wife without any justifiable reason assumes importance. It was not the husband who was responsible for sending her away. It is on the record that the husband had gone previously to her village to bring her back twice. Counsel for the appellant had argued that the period between 1962 to 1969 cannot be taken into account at all because of the resumption of the cohabitation and therefore the offence of desertion, if any, had occurred had been condoned and the period between 1962 to 1969 is totally irrelevant to the question of desertion. Put in this extreme way the argument is unacceptable. I am not suggesting that the period 1962 to 1969 can be counted for the purpose of providing the period of desertion by the appellant. All that I am saying is that that context cannot be completely shut out when considering the point whether the separation of the wife now from 1971 onwards amounts to desertion or not. I may note that in *Bipinchandra* (Supra) AIR 1957 Sc 1769 the reason that it was held that though the wife remains away from her husband's home she was found not to have deserted the husband was because the husband had written a letter in July, 1947 soon after the wife left the house in May 1947 in which he had stated that he had become entitled to divorce and does not desire to keep his wife any longer under his care. It was also found that the wife was willing to come back after having been away for only a few months and she actually lived during that period with parents of the husband. The courts commented adversely on the fact that the husband had not examined either his father or mother in that regard and therefore came to the conclusion that the wife had no intention in bringing the cohabitation permanently to an end and as such had not deserted her husband. In the present case however the going away

of the wife in 1971 and keeping away from matrimonial home without any justifiable reason from 1971 onwards for a period of over 2 years certainly does raise an inference that she had deserted the husband with an intention to bring cohabitation permanently to an end. It is in that context that her earlier absence of 7 years plays a vital part. After all it is not a small period for a young couple to be separated for 7 years. It is most unnatural for a wife to remain away from the husband for 7 years without reasonable cause and yet suggest that there was no intention to bring cohabitation permanently to an end. Matrimonial home is not like a game of house building which can at any time be locked up and reopened. It is a living constant human institution which requires daily contact and sharing of life and experience jointly and sympathetically. When this live contact is broken for a long period without any reasonable cause, matrimonial home as such ceases to exist and the person responsible for this state of affairs cannot escape the charge of desertion being proved against her. In this case apart from the unacceptable reason given by the wife no justification for being away has been forthcoming. No doubt the onus was on husband, but he has discharged it. Thus staying away of wife must be held to be without reasonable cause. Though the said period between 1962-69 may be said to have been condoned but as stated in *Narayan Ganesh Dastane v Sacheta Narayah Dastane* : [1975]3SCR967 the condensation of a matrimonial offence is not to be likened to a presidential pardon which once granted wipes out the guilt beyond the possibility of revival. No matrimonial offence is erased by condensation. It is obscured but not obliterated. Condoned cruelty can, therefore, be revived. For revival of condensation it is not necessary that the conduct should be enough by itself to found a decree for judicial separation. It has also been held that a lesser degree of cruelty is necessary to review the condoned offence in order to found an original charge *Florence Amalia Thompson V George Thompson* I.L.R 29 Cal 395. Thus I am satisfied that when she went away in 1971 it was with intention to end cohabitation permanently. I may reiterate that I am not utilising the period of 7 years to hold that desertion because she had come back and resumed cohabitation but in the context of that long period and her ageing going away and remaining away for over 2 years without reasonable cause amounts to desertion. The trial court which recorded the evidence of the witnesses including the wife and had watched demeanour has

come to the conclusion that she had made up her mind to leave the husband's home with the intention to bring cohabitation permanently to an end and I can see no compelling reason to take a different view.

(3) I also find that the relationship between the parties has reached a stage where the marriage seems to have irretrievably broken down. Out of a period of 17 years maximum that has been spent together is over a three years, Parties have been separated for the last over 6 years. No doubt the last three years have been spent in litigation. But the whole conduct especially of the wife in walking out in 1971 and not coming back at all when no reasonable ground has been given for her absence leave no manner of doubt that she has deserted the husband. May be the reason was that the marriage had reached a stage in which it had only become merely a shell without any reality. Whatever the reason it would seem against the modern accepted principle to refuse to give a divorce. I would in the circumstances agree with the trial court and dismiss the appeal.

(4) I may mention that the husband who was present in court had stated that irrespective of the decision given by this court he will continue to pay Rs. 145.00 per month which had been directed to be given as maintenance by court during the proceedings. This undertaking will naturally continue so long as the wife does not remarry. Of course, this undertaking of the husband does not prevent the wife asking for extra alimony or maintenance as provided in the Act because this undertaking to pay Rs. 145.00 was a unilateral one and was not dependent on the wife to give up her right to claim more for herself and/or for her child, who admittedly is with her.