

Chander Dev Chadha Vs. Rani Bala

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Court : Delhi

Decided On : Mar-26-1979

Reported in : 17(1980)DLT1

Judge : Rajinder Sachar, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9 and 23(3)

Appeal No. : First Appeal No. 13 of 1978

Appellant : Chander Dev Chadha

Respondent : Rani Bala

Advocate for Pet/Ap. : B.B. Sahni,; Maehswar Dayal and; A.C. Mittal, Advs

Judgement :

Rajindra Sachar, J.

(1) This is an appeal against the dismissal of husband's application under Section 9 of the Hindu Marriage Act for restitution brought by him. The parties were married on 30 April, 1967. The first male child was born on 1.2.1969. His name is Banti. The second male child was born on 22.11.1974. Earjieronl2thNovember,1974 the application under Section 9 of the Act has been brought by the appellant husband alleging that the respondent wife had left the matrimonial home without any justification and he is seeking the restitution.

(2) The wife had denied that she was keeping away without any reasonable excuse. It was pleaded that she was treated cruelly and that he used to give her beating. The Trial Court by the impugned order found that the wife was justified in withdrawing from the husband's society and dismissed the application. The husband being aggrieved has come up in this court in appeal. It is common case that the wife left the matrimonial home on 24.6.1974 and is living in Kapurthala with her parents' family. Of course, there is a serious dispute as to the circumstances and the reasons why she left. It appears that after marriage the husband who belongs to Delhi joined with the brothers of the wife in a business venture at Kapurthala. The appellant then shifted to Kapurthala, within about 9-10 months of the marriage i.e. sometime in the end of 1968. But after some time this business failed and he alleges that he came back from Kapurthala and the wife went subsequently for her first delivery according to the customs. To start with, the appellant and the respondent lived with the family at Lajpat Nagar, then to Church Lane and then according to the appellant at the instance of the respondent he took a separate house in Krishan Nagar. He thus denied having given any beating to her. The respondent's case as put up by her in evidence is that ever since the marriage the husband was treating her cruelly and used to beat her and even suspected her character and openly told her that she was just one of the women. She states that she stayed in her parents family from 1969 onwards and it is only some time in January/February 1974 that at the intervention of some people she came back with the husband to Delhi and then left Delhi in June, 1974 because there was no improvement in his behavior. Mr. Sahni the learned counsel for the appellant challenged the finding of the Trial Court as to the reasonableness of the excuse for the- wife withdrawing from the husband's society. It is contended that there was no proof of any cruelty or misbehavior justifying the withdrawal by the wife. In the written statement the plea taken was one of justification by the: wife by saying that the behavior of the husband was both cruel and indifferent towards her and that the appellant also used to run away from the. parents to unknown places and this attitude remained unchanged and indifferent even after January/February, 1974 when she came back from Kapurthala. The first criticism.by Mr. Sahni was that according to the: respondent she had allegedly remained continuously in Kapurthala from 1968 onwards till January, 1974 when she was forced to go back

from Delhi to Kapurthala in June, 1974. My attention has been drawn to number of letters to show that the respondent with her children were in Delhi during this period. These letters which have been referred are for the period 1973-74. They do suggest that the respondent was, though for some time at Kapurthala but also certainly for sometime at Delhi. Thus EX. Public Witness .3/7 dated 30.4.1978 a letter written by the brother of the respondent to the father of the appellant mentions about the appellant and the respondent and Banti having reached Kapurthala which apparently does show that they had all come together from Delhi. The letter Ex. Public Witness .3/6 dated 29th December, 1973 written from Kapurthala by the father of the respondent also indicates that the respondent and Banti were at Delhi at that point of time. Ex. Public Witness .3/1 of February, 1974 is a letter from Kapurthala again to Delhi in which query was made if Banti would be school going. Mr. Sahni says that this proves that Banti must be in Delhi but that may be equally consistent with the plea even of the respondent that she had come to Delhi in January, 1974. The statement of respondent that she never came to Delhi in between 1969 to 1974 is not absolutely correct. It cannot be accepted that in between 1969 to 1974 she never came to Delhi from Kapurthala. But this does not prove the suggestion of the appellant that from 1969 to 1974 right up to June, 1974 there were normal relationship of the two and his case does not automatically stand proved from the fact that the respondent has exaggerated in stating that she never came to Delhi in between 69 to 74. My attention was also invited to number of letters written by the respondent to the appellant from February to November 1978 i.e. Ex. P/1. Ex. P/1 is dated 21.2.1973 written by the respondent to the appellant giving the usual family information. A reference was made by Mr. Sahni to various letters to show that the contents of these letters apparently suggest that there was normal relationship between the wife and the husband. A perusal of these letters no doubt show that there was a steady correspondence from the wife to the husband and couched in quite intimate and fond terms in which the respondent wrote affectionately though she was complaining that she was not giving response to the letters and pleading with the appellant to come to Kapurthala due to illness of her father. Also complaining that inspired by her continuously writing she had not been receiving any reply. I am prepared to accept that there was some confusion in relationship and a lack of

communication between the appellant and the respondent for the period 1969 to 1973. But as to how much mis-understanding or mistrust of each other was there cannot exactly be located; though from the letters of respondent it does appear that the respondent was carrying on the burden and a grievance that the affection was only from her side and was not being reciprocated by the appellant. Whatever the position may be it is an admitted case that she did come back in January, 1974 to Delhi, (although according to the appellant was all the time in Delhi). She however went away to Kapurthala in June, 1974 and this unfortunately become the final break. The version of how and why she went on 24th June, 1974 differs radically. The respondent maintains that the appellant himself had come to the Railway Station see her off when she went with her brother, and had told her to stay away and if she came back she would be thrown out of the house while the appellant maintains that he was away on work and when he came home in the evening he found that she was not at home and was greatly worried about her. The appellant says that he tried to find out from Gita Colony where some of the relations of the respondent lived but they only told him that she might have left for Kapurthala with her child, as her brother had come and because her father was not keeping well. He says he tried to phone to Kapurthala but could not get a connection and he came to know about the whereabouts from the letter Ex. PX1 dated 25.6.1974 written by Shri Siri Ram the brother of the respondent informing him that respondent had safely reached Kapurthala. This letter was replied to as is clear from another letter Ex. PX/2 dated 9.7.1974 received by him from the brother of the respondent informing him that the health of the respondent's father was not alright. The appellant, however, says that he had left for Kapurthala earlier after receiving the June letter. According to the appellant he tried to persuade the respondent to come back with him to Delhi but was told by her family members that they will send her back when they like. He says he made efforts to bring her back, but was always snubbed.

(3) The appellant thereafter moved the application for restitution on 12.11.1974. The main contention by Mr. Sahni was that all the allegations of cruelty, beating alleged by the respondent and also casting aspersion on the character of the appellant, imputing the drunkenness etc. were not mentioned at all in the reply to the petition and therefore any grievance on this score made by the respondent

should not have been looked into. Mr. Sahni relied upon 1950 PC 90 Siddik Mahomed Shah v. Mt. Saran & Others & 1950 PC 90 The Bank of India Ltd. & Others v. Jamsetji A H. Chinoy & M/s. Chinoy & Co. to emphasise that no evidence should be looked upon on any point on which there has been no pleading. I am afraid there is no merit in the arguments. On the pleadings the respondent had to lead evidence about the alleged cruelty and the misbehavior by the husband and therefore a justification for staying away. No doubt, it would add more credibility and acceptance of the evidence if apart from the mere bald allegation of cruelty and misbehavior the written statement had also specifically given specific instances of misbehavior and cruelty. But mere fact that details were not so mentioned does not mean that the evidence relating to that has to be shut out. As to what value that evidence should have is a different matter and is certainly for the court to examine. It is true that there is nothing absolutely established on evidence to show that the appellant was a man of bad character or used to excessive bout of drunkenness and that he was beating her often. I say this because from the letters of 1973 it is evident that whatever mis-understanding and hesitation in the mind of respondent may have been, it does not show a kind of misbehavior of the type which is alleged by her in evidence now. No doubt there is consistent refrain of neglect and lack of any appreciativeness by the appellant, but letters rule out the type of drunken husband who was indulging in beating of his wife and the child. There is a certain warmth in the letter which reles out the conduct at least up to 1973. But something did break between the two by 1974 is clear that there is no letter from the wife after she had gone to Kapurthala in June 1974. It may be that the respondent has not proved cruelty on the part of the appellant. But cruelty is only one aspect. The fact that cruelty is not proved does not per se mean that there is no reasonable excuse for the wife to withdraw from the society of the husband. Even the refrain of the letters written in 1973 does show a consistent and persistent complaint and fact -neglect by the appellant. The pleading for the husband's company by the respondent is so persistent and the denial by the appellant is so casual and unfeeling that if the wife gets a feeling of neglect and almost of contempt at the appellants' hand, the inference is not unreasonable. Mr. Sahni suggested that the appellant might not be corresponding with the respondent but that does not mean that he had no heart or he did not

reciprocate the sentiments. I find it difficult to accept that if the reciprocation was there the appellant should not have been mould to some reciprocation, however small to the sentiments of the wife which are no doubt over-flowing from the letters of 1973. As a matter of fact, the letters of 1973 which the appellant relies to show that there was no cause of mis-understanding between the two, also proves that she is not unreasonably staying away. It is the appellant's case that up to 19/4 the relationship was very cordial; if so .nothing has been suggested as to what transpired suddenly in 1974 for the wife to stay away. It may very well be that the patience and the humility of the respondent has been stretched beyond limit. Neglect, indifference, by the appellant has probably been piling and gradually, and at last became intolerable by the respondent in 1974. It is not very clear as to why exactly the appellant did not reciprocate the sentiments. How much truth is in the allegation of the respondent about his character and general behavior is frankly a little difficult to say because evidence of both sides on this aspect is a general and vague one. Anyhow, no objection can be pointed out to the conduct or behavior of the respondent up to 1974 because the appellant himself admits and maintains that the relations were very cordial. Some tension was no doubt building up, but the fault cannot be with the respondent.

(4) Rather the conduct of the appellant when the respondent went to Kapurthala in June' 1974 does not show him in good light as a husband solicitous of his wife's well being. The respondent has given the evidence that the appellant had himself come and left her at the station to go to Kapurthala in June, 1974. Ex. Public Witness . 1/1 dated 25th June. 1974 written by the brother of the respondent giving the information of having reached Kapurthala would seem to support such a assertion because it is a letter showing normal relations. But appellant has a different version suggesting that the respondent had gone away in his absence and without his knowledge. But this version is not plausible. Had the respondent gone away in. the absence of the appellant the writing of this letter would seem to be of little incongruous or a letter if it was to be written should have made a grievance of the circumstances which made them to go. The reaction of the appellant is rather strange and in a way callous. According to him he had gone to the market and when he came home he found his wife and child missing. He alleges to have gone to Gita Colony where a relation of the respondent lived, who

told him that the brother of the wife had come and she might have gone with him to Kapurthala. The case and careless manner of his reaction is unexplicable. Surely one does not like the missing of one's wife and child in such a cavalier manner. The true Explanation may infact be that he very well knew that the respondent had gone to Kapurthala, as she has deposed and hence was not naturally in panic. I do not find that he even sent a telegram to Kapurthala on that very day of course, he says that he made efforts on telephone but failed. Bat there is nothing to prove it. He says he went to Kapurthala but she was not sent back. May be, but what has amazed me is the speed and inexplicable haste with which he moved the restitution application on 12.11.1974. It is important to note that second child was born on 22.11.1974. Appellant has not cast any aspersion on the Character of the wife. Appellant obviously knew that the wife was expecting to have child in November'1974. The indecent haste in going to court shows utter lack of sentiments and want of feeling in the appellant for the respondent. The first child was also born in parents house of the wife. In the normal course the wife might have gone to the parents house for second delivery. The wife had gone in June, 1974 and according to the appellant there was no reason why she should have gone and there was a normal life. If that was so where was the hurry in moving this application just ten days before the second child was to be born. The attitude exhibited by the appellant discharges the onus on the respondent to prove that she had a reasonable excuse for withdrawal from the society of the husband. After all what would pass through the mind of a wife who is carrying the appellant's child to be served with court summons and charged at having deserted the husband. One would expect that this was a delicate time when a person should normally have a generous attitude of forget and forgive. The appellant, however, is differently made. Is it any wonder that something within must have broken with the respondent. I am not necessarily finding any fault with the appellant, may be he has some reasons of his own. But at least none are on record, which in any way put the fault on the respondent. So the respondent has shown that she has sufficient excuse to remain away. This is one of those unfortunate cases where externally it is difficult to find fault, and yet the essential link between the couple seems to have snapped. I feel that the appellant by going to court at the time when the respondent was carrying his child has caused such suffering as bordering on

cruelty as would justify the conduct of the respondent in withdrawing from the society. I wish it could be healed. For that the appellant will have to behave differently, create a sense of trust in the respondent. I had actually asked the respondent to be present because appellant had stated that if the respondent came to the court she would be willing to come back to him. But nothing came out of it. The respondent was not willing, in the present state of affairs and feeling to go back. On the state of evidence on the record I do not find that her refusal is unreasonable and yet none of them wanted to break the marriage. The response of both the parties was identical. None wanted to break a marriage. I am told, the husband wants to take back the wife but cannot because the respondent is not willing to go back, and as on evidence she cannot be blamed; the husband/appellant cannot succeed. The court is helpless in such circumstances to do anything except to hope that better sense may prevail on both the parties shortly. It is here that one regrets the absence of any effective conciliation machinery to aid the court. A mere stress on Section 23 to try conciliation is not enough. Instrument must be provided for.

(5) As is well known sub-section (3) of Section 23 empowers the courts in bringing about re-conciliation to adjourn the proceedings and refer the matter to any person named by the parties or to any person nominated by it, and then to dispose off the proceedings having due regard to the report of the conciliator. This sub section was introduced by Parliament Act 68 of 1976 in pursuance of the 59th report of the Law Commission of India which in para 8.24 had suggested such an amendment. It should also be noted that earlier in its 54th report the Law Commission had suggested the addition of a new order namely order 32 A Civil Procedure Code which has since been inserted in the Civil Procedure Code by Parliament Act 104 of 1976. Subrule 4 of Order 52 A does provide for the court to secure the services of any person including a person professionally engaged in promoting the welfare of the family for the purpose of assisting the courts .indischarging the functions imposed on the court to make efforts to arrive at a settlement. By virtue of Order 32 A Rule 1 (3) this order may not apply to proceedings under the Hindu Marriage Act. Though the provision does exist the practical experience is that there is in fact no proper working of the said provisions. The reason is two fold-(1) the inherent constraint of the infrastructure of the Civil Court which deals with such matters of

family law; (2) the absence of any indication either in the statute or in the rules or any of the directions issued by this court, providing identifiable set of persons or organisations to whom the matters may be referred. In practice what is happening is that the courts do in pursuance of the mandate of section 23(2) have a small sitting and talk with the parties concerned to see whether it is possible to have a reconciliation but by the very nature of the working of the courts and because of the ever pressing burden of the accumulated arrears weighing on the court, it is obvious that a very perfunctory and casual kind of sittings with the parties can take place. It is no point finding fault with the courts because situated as they are with the burden of the over work it would not be practicable to expect the courts to assist and spend very much more time which would be necessary, if a serious efforts at reconciliation and understanding the problem of the parties in matrimonial conflicts was to be understood. Courts may with their judicial tradition try to understand, a problem to the best of their ability but as the Law Commission said in the 54th report, litigation concerning or involving the affairs of the family require a special approach in view of the serious emotional aspects involved and for this sensitive area of personal relationship our ordinary Judicial procedure is not ideally suited. In this connection reference may be made to the machinery in England where also the courts are required to make conciliation efforts before the start of the trial. Thus while dealing with Section 2 of Matrimonial Causes Act of 1955, the court in 1967 1 AER 139 observed that:-

'It is generally accepted that reconciliation is often more likely to be successful, both immediately and permanently, if it is negotiated with the help of those who have the requisite personal qualities for, and specialised training in, the work. Under such guidance, furthermore, even if a reconstitution of the matrimonial relationship cannot be effected, at least the problems arising out of its disruption can often be solved with the minimum injury to the parties or their children.'

(6) The court thereupon provided that the court may refer any suitable case to a senior court welfare officer, or probation officer or Marriage Counsellor etc. Those persons were to report back to the Welfare Officer's department who will in turn report to the court whether reconciliation could or could not be effected. Again direction was issued in pursuance of Section 3 of Divorce Reforms Act 1969.

(Same provision has been retained in Section 6 of the Matrimonial causes Act 1973, the Divorce Reforms Act 1959 has been repealed) as reported in 1971(1) AER 63 and 1972(3) AER768, providing that the Organisations like the Marriage Guidance Council, any centre of the Catholic Marriage Advisory Council, the Jewish Marriage Education council and any probation Officer would be treated to be qualified persons to help effect reconciliation between the parties to a marriage, within the meaning of the Act. Though our law has the provision of reconciliation, no machinery to involve qualified outsiders has been evolved. Thus there is no provision to how or in what manner the services of a person who is professionally engaged in promoting the welfare of the family is to be obtained by the courts. A mere provision in the Act is hardly of any assistance. Is the court to refer the matter to any person it chooses because this will raise a question whether other person will be agreeable to undergo this trouble involved in making conciliation efforts between the estranged couple. There may be a question of payment to be made to the professional persons and how are these funds to be provided for. The result is that this provision in the Act though very laudable is in reality lying dormant for lack of any implementation machinery. In my view it is time that the courts or the Government issue specific directions preparing a list of welfare experts attached to the courts dealing with the Matrimonial matters to whom the matters could be referred. There should be a regular list of organisations like the All India Women Conference Branch of Moral and Social Hygiene Organisation or some other social organisations looking after the welfare of the women and children. It will be necessary also to have attached to the courts some psychiatrists, and social workers because the problem that is faced by an estranged couple is not a problem which can be dealt with satisfactorily by any lay man. The ideal solution of course would be the constitution of family courts as was recommended by the 59th report of the Law Commission of India. Thus a family court must be equipped with certain services like social, medical and psychiatric. Alexander in his article 'The family court An Obstacle Race' 19th Univ. Pitt. L. Rev. 602 at page 606 lists the following essential services:

'.....MEDICAL, psychological, psychiatric, economic, educational, social case work, and marriage counselling of both the non-directive and advice guidance types'.

(7) The idea of Family Court as a proper forum for all matters between husband and wife, custody and maintenance of children, property dispute is now catching up. Thus the Australian Family Laws Act 1975 has created a Family Court of Australia and provides that the Judge of Family Courts should not only have a minimum of legal qualification but should also be trained and experienced suitably to deal with the matters of family law. They will have the assistance of Counsellors and Welfare Officers attached to the court under the Director of Counselling and welfare of the Courts, and are expected to keep in attempts of reconciling the parties. Of course the path of setting up family courts is not easy one, but then as an article by P.T.Horgan on Family Courts in 27 Northern Ireland Legal quarterly (1976) at page 130 says, 'a unified family court, utilising the expertise of other disciplines, is a viable and necessary alternative to the present method of dealing with family matters. It will not solves all problems of the family but rather deal with these problems in a realistic, therapeutic and organized manner. The task of establishing such a court is not an easy one and the road to the realization of the ideal is marked, though not be set, with difficulty. The sooner we begin the better'.

(8) Japan has also constituted family courts which consist of family court judge and two conciliation Commissioners one of whom is normally a woman. Medical including psychiatric staff is available for assistance at the request of the Judge. The probation Officers and other members of the Organisation function in part time as formal counsellors. All these officers try to revive the marital type whenever it is possible. (From J.M. Decretts' 'Death of Marriage Law' page 201).

(9) There is a large demand for having family courts in Canada and also it is recognised that not only the knowledge of law but other kinds of human knowledge and experience should be considered essential for constituting the working of the courts. In my opinion if marriage laws are to serve the social purpose of not only keeping in conciliation of estranged couples but also to reduce as much of tension, misunderstanding even if there is to be divorce, it is essential to associate qualified personel with the courts, until the time family courts are constituted. Matrimonial problems are too intimate, peculiar and of difficult kind than to be solved by the adversary procedures, which is a part of our system of justice. Were such a machinery available, this may have been helpful in cases like the present.

(10) With these observations, the appeal as indicated above is dismissed with no costs.

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