

Ram Kali Vs. Gopal Dass

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Court : Delhi

Decided On : Jan-13-1971

Reported in : ILR1971Delhi6; 1971RLR10

Judge : H.R. Khanna, C.J.,; V.D. Misra and; Rajindar Sachar, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13

Appeal No. : Letter Patent Appeal No. 101 of 1967

Appellant : Ram Kali

Respondent : Gopal Dass

Advocate for Pet/Ap. : N.D. Bali and; L.D. Adlakha, Advs

Judgement :

H.R. Khanna, C.J.

(1) This appeal under Clause 10 of the Letters Patent by Shrimati Ram Rali against the judgment of learned Single Judge affirming on appeal the decision of the trial Court whereby a decree for divorce under Section 13 of the [Hindu Marriage Act, 1955](#), (hereinafter referred to as the Act), was granted in favor of Gopal Dass respondent against the appellant, has been referred to the Full Bench in view of the importance of the matter. The short question which arises for determination is whether the absence of restitution of conjugal rights as between

the parties to the case for a period of more than two years after the passing of the decree for restitution of conjugal rights in favor of the appellant against the respondent constitutes a good ground under clause (a) of sub-section (1) of Section 23 of the Act for not granting the decree of divorce in favor of the respondent. The question has arisen in the following circumstances:-

(2) The parties were married according to Hindu rites on November 27, 1956. The appellant obtained decree for restitution of conjugal rights against the respondent on March 17, 1961. The respondent thereafter filed a petition under Section 13(1A)(ii) of the Act for a decree of divorce against the appellant on January 23, 1965. The ground on which the respondent sought the dissolution of marriage by a decree of divorce was that there had been no restitution of conjugal rights after the passing of decree for restitution of conjugal rights in favor of the appellant on March 17, 1961.

(3) The petition was contested by the appellant. She denied the allegations of the respondent that there had been no restitution of conjugal rights after the passing of the decree dated March 17, 1961. It was averred that the parties had cohabited and lived together as husband and wife in the months of November and December, 1962.

(4) The trial Court did not accept the evidence adduced by the appellant in support of her plea that the parties had lived together and cohabited in the months of November and December, 1962. It was held that as there had been no restitution of conjugal rights after the passing of the decree dated March 17, 1961, the respondent was entitled to get the marriage dissolved by a decree of divorce. A decree of divorce was accordingly granted in favor of the respondent. Order was also made by the trial Court on an application under Section 25 of the Act for payment of Rs. 50.00 per mensem as maintenance allowance by the respondent to the appellant.

(5) In appeal the learned Single Judge affirmed the finding of the trial Court that there had been no restitution of conjugal rights, after the decree for restitution of conjugal rights had been passed on March 17, 1961. Argument was also advanced before the learned Single Judge that the respondent was not entitled to

the relief of divorce because of the provisions of section 23(1)(a) of the Act, but this argument did not find favor with the learned Judge. In the result, the appeal was dismissed.

(6) In Letters Patent Appeal, Mr. Bali on behalf of the appellant has not, in view of the concurrent findings of the trial Court and the learned Single Judge, advanced any argument that there was restitution of conjugal rights as between the parties, after the passing of the decree dated March 17, 1961. The learned counsel has, however, referred to the provisions of clause (a) of sub-section (1) of Section 23 of the Act according to which, in any proceeding under the Act, whether defended or not, if the Court is satisfied that any of the grounds 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 then. and in such a case, but not otherwise, the Court shall decree such relief accordingly. It is urged that the effect of the above provision is that a petitioner in a case for dissolution 'of marriage by a decree of divorce cannot take advantage of his own wrong or disability. The respondent according to the learned counsel, failed to comply with the decree for restitution 'of conjugal rights which was awarded against him. To grant the decree of divorce in his favor would be tantamount, it is submitted, to allowing the respondent to take advantage of his own wrong. Reference in this connection is made by the learned counsel to the decision of Pandit, J. in the case of Chaman Lal Chuni Lal v. Smt. Mohinder Devi, , wherein the observations support the stand taken by the learned counsel.

(7) As against that, Mr. Adlakha on behalf of the respondent contends that sub-section (1A) of Section 13 of the Act was introduced in that section by the Hindu Marriage (Amendment) Act, 1964 (44 of 1964). As a result of that amendment, clauses (viii) and (ix) 'of sub-section (1) of Section 13 as they originally stood were omitted and sub-section (1A) was substituted in their place. Clauses (viii) and (ix) of sub-section (1) of Section 13 as they existed before the amendment read as under:-

'ANY marriage solemnized, whether before or after the commencement of this Act, may. 'on a petition presented by either the husband or the wife, be dissolved by a

decree of divorce on the ground that the other party- (viii) has not resumed cohabitation for a space of two years or upwards after the passing of a decree for judicial separation against that party; or (ix) has failed to comply with a decree for restitution of conjugal rights turn a period of two years or upwards after the passing of the decree.'

(8) The above-mentioned clauses were omitted by Act 44 of 1964. Sub-section (1A) which was inserted by the amending Act, reads as under:-

'(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of two years or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.'

(9) According to Mr. Adlakha, the result of the amendment is that even the spouse who commits default in complying with the decree for restitution of conjugal rights is entitled to a decree of divorce if there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards after the passing of a decree for restitution of conjugal rights. The default of the spouse in not complying with the decree for restitution of conjugal rights, it is submitted, cannot be a ground for denying the relief to that spouse. We have given the matter our earnest consideration and are unable to subscribe to the view propounded on behalf of the appellant. We are further of the opinion that the argument advanced on behalf of the respondent is well-founded.

(10) According to clauses (viii) and (ix) of sub-section (1) of Section 13 of the Act as they stood before the amendment a marriage could be dissolved by a decree of divorce on a petition by the husband or the wife on the ground that the other party had not resumed cohabitation for a period of two years or upwards after the passing of a decree for judicial separation against that party or had failed to

comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of that decree. The law, as it then existed, gave a right for applying for a decree of divorce under the above-mentioned clauses only to the spouse in whose favor the decree for judicial separation or for restitution of conjugal rights had been awarded. The other spouse against whom the decree for judicial separation or for restitution of conjugal rights had been granted had no right under the then law for applying for a decree of divorce even though there had been no resumption of cohabitation or no restitution of conjugal rights for a period of two years or upwards after the passing of the decree. As a result of the amendment made by Act 44 of 1964, clauses (viii) and (ix) were omitted from sub-section (1) of Section 13 and sub-section (1A) of Section 13 was inserted. The effect of the new sub-section was that not only the spouse in whose favor a decree for judicial separation or for restitution of conjugal rights had been granted was entitled to present a petition for dissolution of marriage but even the other spouse against whom the decree for judicial separation or for restitution of conjugal rights had been awarded was also clothed with the right to present such a petition. The petitioner in such a petition would be entitled to get the relief of dissolution of marriage by a decree of divorce if he or she can show that there has been no resumption of cohabitation or no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards after the passing of the decree for judicial separation or for restitution of conjugal rights. The result of the amendment is that for the purpose of applying for a decree of divorce under sub-section (1A) a spouse against whom an earlier decree for judicial separation or for restitution of conjugal rights had been awarded shall stand on the same footing as the spouse in whose favor such a decree had been granted.

(11) The argument that the awarding of a decree of divorce under sub-section (1A) in favor of a spouse against whom an earlier decree for judicial separation or restitution of conjugal rights had been awarded would run counter to clause (a) of sub-section (1) of section 23 of the Act, inasmuch as the defaulting spouse would be taking advantage of his or her own wrong, cannot be accepted. To accede to this contention would be making a dead letter of the amendment introduced in Section 13 of the Act by Act 44 of 1964. A decree for judicial separation or for restitution of conjugal rights necessarily presupposes that the spouse against

whom such a decree is granted has been guilty of marital wrong or has failed to discharge an essential marital obligation. Despite such a wrong or failure on the part of the defaulting spouse, the legislature has given a right by the amending Act to the defaulting spouse to apply for a decree of divorce if the other conditions mentioned in sub-section (1A) are fulfilled. To non-suit such a petitioner by invoking clause (a) of subsection (1) of Section 23 would have the effect of defeating the manifest purpose of the amending Act and reducing it to futility. A construction which would lead to such a result must be avoided. The provisions of Section 23(1)(a), in our opinion, should be so construed that they operate in harmony with those of Section 13(1A) rather than in such a manner as may have the effect of nullifying the change brought about by insertion of sub-section (1A) in Section 13 of the Act. As observed on page 45 of Maxwell on the Interpretation of Statutes, 12th Edition, 'if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.' The duty of Courts is to place such construction on a statute as shall suppress the mischief and advance the remedy. In construing an enactment and determining its true scope it is permissible to have regard to all such factors as can legitimately be taken into account to ascertain the intention of the legislature such as the history of the Act the reason which led to its being passed and the mischief which it intended to suppress as well as the other provisions of the statute. Reference in this context may be made to the case of *R.M.D. Chamarbaugwalla and another v. Union of India and another* : [1957]1SCR930 . wherein Venkatarama Ayyar, J., speaking for the Court, observed :

'NOW, when a question arises as to the interpretation to be put on an enactment, what the Court has to do is to ascertain 'the intent of them that make it', and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials. The literal construction then', says Maxwell on Interpretation of Statutes, 10th Edition, page 19, 'has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to

get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy'. The reference here is to Heydon's case, (1584) 3 C R : 76 E R 637 . These are principles well settled, and where applied by this Court in Bengal Immunity Co., Ltd. v. State of Bihar : [1955]2SCR603 . To decide the true scope of the present Act, therefore we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute,..... ' .

(12) Keeping the above principles in view, we are of the opinion that the intention of the legislature while amending the Act by Act 44 of 1964 was that the non-resumption of cohabitation or absence of restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards, after the passing of a decree, for judicial separation or for restitution of conjugal rights, would not constitute a wrong within the meaning of clause (a) of sub-section (1) of Section 23 of the Act, so as to disentitle the spouse, against whom the earlier decree for judicial separation or for restitution of conjugal rights had been granted, from obtaining the relief of dissolution of marriage by a decree of divorce. The underlying object of the legislature in inserting sub-section (1A) in Section 13 seems to be that if there has been no resumption of cohabitation or no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards, after the passing of a decree for judicial separation or for restitution of conjugal rights, the Court should assume that the relations between the parties have reached a stage where there is no possibility of reconciliation and as such it might grant the decree of divorce. The aforesaid object is in consonance with the modern trend not to insist on the maintenance of union which has utterly broken down. It would not be a practical and realistic approach, indeed it would be unreasonable and inhuman, to compel the parties to keep up the facade of marriage even though the rift between them is complete and there are no prospects of their ever living together as husband and wife. We may in this context refer to the following observations of Viscounts Simon, L.C. in the case of Blunt v.

Blunt, 1942-3 All ER 76, while specifying the considerations which should prevail with the Courts in matrimonial matters :

'TO these four considerations I would add a fifth of a more general character, which must indeed be regarded as of primary importance, viz., the interest of the community of large, to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down. It is noteworthy that in recent years this last consideration has operated to induce the Court to exercise a favorable discretion in many instances where in an earlier time a decree would certainly have been refused.'

(13) The above observations were relied upon by a Division Bench of Rajasthan High Court in Smt. Leela v. Dr. Rao Anand Singh, , to which one of us was a party.

(14) For the reasons given above, we are unable to agree with the view taken in the case of Chaman Lal Chuni Lal v. Smt. Mohinder Devi(1). Reference has also been made on behalf of the appellant to the case of B. R. Syal v. Smt. Ram Syam, . What was held in that case was that where the husband had, throughout the proceedings against his wife, been taking advantage of his own wrong in order to get his marriage dissolved and no impropriety or illegality was ever committed by the wife who at all times was anxious and willing to live with him as his wife and had been imploring him to take her back which he did not do the husband's petition for divorce should be dismissed. The above case was decided in the context of its facts and, in our opinion, the appellant cannot derive much assistance from it.

(15) The appeal consequently fails and is dismissed but in the circumstances without costs.