

Anand Kumar Sharma Vs. Kanta Sharma

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Court : Delhi

Decided On : Sep-24-1982

Reported in : 1985(8)DRJ45

Judge : N.N. Goswamy, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1) and 24

Appeal No. : First Appeal No. 76 of 1982

Appellant : Anand Kumar Sharma

Respondent : Kanta Sharma

Advocate for Pet/Ap. : P.N. Talwar and; C.S. Bhandari, Advs

Judgement :

N.N. Goswamy, J.

(1) This appeal by the husband is directed against the judgment and decree dated 27th January, 1982 passed by the learned Additional District Judge whereby the petition of the wife under Section 13(1)(ia) of the Hindu Marriage Act was allowed and the marriage between the parties was dissolved by a decree of divorce.

(2) The respondent-wife had filed a petition for dissolution of marriage on the grounds of cruelty. The acts of cruelty as alleged were that her father-in-law was

misbehaving with her and wanted her to surrender to his desire of sex, the husband and his parents were not satisfied with , dowry brought by her and were harassing the wife for bringing more dowry and they are further allegations regarding the beatings having been given to the wife.

(3) During the course of proceedings, the respondent-wife filed an application under Section 24 of the Hindu Marriage Act for the grant of maintenance pendente lite and litigation expenses on the ground that she had no sufficient means to meet the expenses. The learned trial Judge allowed the application and awarded a sum of Rs. 250.00 towards litigation expenses and Rs. 75.00 per month as maintenance pendente lite from the date of the application. This order was passed on 25th April, 1981 and the case was adjourned for payment of the said amount to 7th May, 1981. On 7th May, 1981, the appellant paid a sum of Rs. 400.00 which covered the sum of Rs. 250.00 awarded as litigation expenses and the arrears of maintenance for two months up to 30th April, 1981. Thereafter the case was adjourned from time to time since the Presiding Officer had vacated that seat and no new Presiding Officer had been appointed. The case was listed for 26th October, 1981, for proper orders, but on that date since the new Presiding Officer had taken over, the issues were framed. After framing the issues, the case was again adjourned to 30th November, 1981 for evidence of the petitioner and payment of the maintenance allowance. On 30th November, 1981, the case was adjourned as there was no time available with the court.' It was also directed in the said order that the maintenance had not been paid and the same should be paid on the next date of hearing which will be considered to be the last opportunity. The next date of hearing was 14-1-1982. On that date, the appellant sent an application accompanied by a medical certificate on the ground that he was ill and prayed for adjournment of the case. The application was presented by a proxy counsel. The learned trial Judge, however, did not accede to the request and passed an order to the effect that since the maintenance allowance had not been paid, the defense of the appellant would be struck off. He also recorded the evidence of the two witnesses of the respondent who were present in the court. An opportunity was given to the proxy counsel to cross-examine the said witnesses but he showed his inability. The petitioner closed his evidence on the same day and the case was adjourned for arguments and orders to 23rd January, 1982.

(4) Before the case could be taken up for arguments, the appellant moved two applications on 19-1-82, one for permission to pay the maintenance allowance and the other for recalling the order striking out the defense. These applications were taken up on 23-1-1982 and the first application was dismissed on the same day. The case was adjourned for arguments to 25th January, 1982. On that date, the second application filed by the appellant for recalling the order striking out the defense was taken up. The learned trial Judge observed that since the appellant had failed to pay even a single penny of maintenance allowance to the respondent in spite of the last opportunity having been given, there was no ground to recall the order. He also did not permit the appellant to cross examine the witnesses on the ground that an opportunity had been given to the proxy counsel. The application was accordingly dismissed and the case was fixed for final arguments and orders on 27-1-1982. On that date, the arguments were heard and the impugned judgment and decree was passed. The learned Judge held that the allegations of the respondent' regarding the cruelty to the extent of the misbehavior other father-in-law with her stood substantiated, which clearly J an act of cruelty and on this ground alone he allowed the petition and dissolved the marriage by a decree of divorce.

(5) I have heard the learned counsel for the parties. From the records, it appears that the learned trial Judge was not right in holding that not a single penny out of the maintenance allowance was paid to the respondent because I find that on 7-5-1981 a sum of Rs. 400.00 was paid. It is true that the appellant should have, continued to pay the maintenance allowance to the respondent but from the various orders, I find that the court expected that the maintenance would be paid on the dates of hearing because the case was being adjourned with these orders. Since there was no Presiding Officer the case was for the first time taken up after that on 26-10-1981 when it was fixed for proper order. The default on the part of the appellant is on 30th November, 1981 and 14th January, 1982. On 14th January, 1982, the prayer for adjournment was made on the ground that the appellant was unwell and the application was accompanied by a medical certificate. Considering that serious allegations were raised by the respondent which affect the reputation and status of the families, it was desirable that the learned trial Judge should have granted atleast one more opportunity to the

appellant to pay the maintenance allowance to the respondent-wife. The order dated 14-1-1982 in my opinion, was not justified, particularly, when it was a serious family dispute and it was necessary to adjudicate upon the pleas of the parties. In such serious matters, the court should avoid technicalities and as far as possible do justice between the parties on merits. The court would have been perfectly justified in imposing some costs on the appellant for the default and for seeking adjournments.

(6) For the reasons recorded above, I allow the appeal and set aside the impugned judgment and decree. The case is sent back to the learned Additional District Judge with the direction to recall the order dated 14-1-1982 and allow the appellant to cross-examine the witnesses already examined and to lead the evidence in defense. The respondent would also be permitted to examine any other witness if his name finds place in the list already furnished by him in court. This order is being passed on the consideration that the appellant has paid a sum of Rs. 600-towards the arrears of maintenance and would pay the balance of Rs. 675.00 up to 30th September, 1982 on the next date of hearing before the learned trial Judge. In addition the appellant will pay a sum of Rs. 250,- towards additional litigation expenses to the respondent which will also be paid on the next date of hearing itself.

(7) The parties are directed to appear before the learned trial Judge on 25-10-1982. The learned trial Judge will proceed expeditiously with the trial of the case and as far as possible would dispose of the case within a period of three months commencing from 25-10-1982.