

R.P. Gupta Vs. Sureshta Gupta

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Court : Delhi

Decided On : Mar-17-1983

Reported in : 23(1983)DLT404

Judge : N.N. Goswami, J.

Acts : Hindu Marriage Act - Sections 13(1)

Appeal No. : F.A.O. (M) No. 185 of 1982

Appellant : R.P. Gupta

Respondent : Sureshta Gupta

Advocate for Def. : Nemo

Advocate for Pet/Ap. : P.R. Monga, Adv

Disposition : Appeal allowed

Judgement :

N.N. Goswamy, J.

1. This appeal by the husband is directed against the judgment dated April 24, 1982 passed by the Addl. District Judge, Delhi whereby his petition under Section 13(1)(ib) of the Hindu Marriage Act for dissolution of marriage on the ground of desertion was dismissed.

2. The appellant-husband filed a petition for dissolution of marriage by a decree of divorce under Section 13(1)(b) of the Hindu Marriage Act. It was pleaded that the marriage between the parties was solemnised on 11th December, 1970 at New Delhi and in accordance with Hindu customs and rites. After the marriage, the parties resided and cohabited as husband and wife at 5, Raja Ram Building, Ram Nagar, New Delhi. The respondent conceived a child but unfortunately there was a miscarriage. The respondent used to make flying visits to the appellant and stay with him at Delhi as the respondent was working as Nurse in P.G.I. Hospital at Chandigarh. The respondent at the time of marriage concealed the fact from the husband and his family that she has filled in a bond of 5 years with the P.G.I. Hospital. This fact was revealed later on and it caused depression in the mind of the appellant. The Appellant brought a prospectus of E.S.I. Hospital, Delhi to enable her to join and live with him in the matrimonial home. The appellant requested the respondent to fill in the form, but the respondent tore of the prospectus in presence of the appellant and his parents. The relations between the parties remained cordial till 1974 when the respondent kept on visiting the appellant at his matrimonial home at Delhi. The appellant requested the respondent that she should come and stay with him at Delhi and he would arrange for some employment for her in any of the hospitals at Delhi, but the respondent flatly refused. The appellant's brother and sister-in-law went to attend a marriage at Chandigarh in 1980. They went and met the respondent at the hostel along with other relatives and requested her to accompany them. The respondent however refused to leave Chandigarh and come to Delhi. Similarly other relations of the appellant also made efforts, but without any success. Finally, the appellant went to Chandigarh in December, 1981 and met the respondent in her hostel, he made efforts to persuade the respondent to return to the matrimonial home, but she flatly refused and went to the extent of telling the appellant to give her divorce then and there. The efforts of one Dr. S. Bhatnagar, a near relation of the respondent also failed, and he expressed his regrets and inability to reconcile the parties by his letter which has been placed on record.

3. Notice of the petition was issued to the respondent. She however did not contest the petition and the petition was tried ex-parte.

4. The appellant examined himself as P.W. 1 and his father as P.W. 2. The appellant, as P.W. 1, proved his entire case as set up in the petition. He further deposed that before the marriage, the middle man who had arranged the marriage had told them that the respondent would be transferred to Delhi. The said middleman was the maternal uncle of the respondent and he was at the relevant time working in the Ministry of Health. He further stated that the respondent had been coming to Delhi after every 5 or 6 months, but stopped coming from 1974/1975. He deposed to all the efforts made by him for bringing back the respondent to the matrimonial home. P.W.2, the father of the appellant deposed that after the marriage between the parties, he wanted them to set up their house at Delhi but because of the attitude of the respondent this could not be done. He also stated that the maternal uncle of the respondent had told them before the marriage that he would get the respondent transferred to Delhi. The respondent had been coming to Delhi on a holiday after every 3 or 4 months, but she stopped coming from 1976. His efforts to secure a job of the respondent in E.S.I. Hospital at Delhi also failed because the respondent was not willing even to fill in the form for the said job.

5. The learned trial Judge on perusal of the petition and the evidence came to the conclusion that the appellant had not pleaded any specific agreement that after the marriage, the parties were to live together at Delhi. In the absence of the card agreement, it could not be said that the respondent was not justified in keeping away from the appellant. The parties were admittedly working at different places and as such the respondent could not be expected to give up her lucrative job with the uncertainty in Delhi about her employment and prospect of good career. These observations of the learned Trial Judge are obviously based on a judgment of the Division Bench of this Court in the case of Smt. Swaraj Garg v. K.M. Gary, reported as 14 (1978) D.L.T. 18. That case, however, in my opinion, is distinguishable from the facts of the present case.

6. In the present case, it is true that the appellant has not specifically pleaded about the agreement between the parties to live at Delhi at the time of marriage, but a reading of the entire petition leaves no doubt that atleast the appellant was under the belief that the parties would live at Delhi after their marriage, particularly,

in view of the understanding given to him by the maternal uncle of the respondent who had intervened for getting the parties married. It is alleged in the petition that the respondent had even concealed the fact from the appellant and his family members that she had filled in a bond of 5 years with the P.G.I. Hospital at Chandigarh and when that fact was revealed, the same caused mental depression in the mind of the appellant. This averment indicates that the appellant had a reasonable belief that the respondent would reside with him at Delhi. From the pleadings as also from the evidence, it cannot be disputed that the parties have not lived together since 1975 or latest 1976 and have not cohabited since that date. The respondent has also not come to the matrimonial home since that time. Her attitude in not even contesting the petition as also the appeal in this Court inspire of service leaves no manner of doubt that she has no intention to resume cohabitation. There is no reason to disbelieve the averments made in the petition as also the statement of the appellant to the effect that she went to the extent of asking him to give her divorce when he last visited her at Chandigarh in 1981. All these facts taken together lead to an irresistible conclusion that the respondent has been keeping away from the appellant with the intention never to resume cohabitation. In these circumstances, I am of the opinion that the desertion on the part of the respondent is clearly proved.

7. For the reasons recorded above, the appeal is allowed and the marriage between the parties is dissolved by a decree of divorce. Since the respondent was proceeded ex-parte both before learned trial Judge and in this Court, I leave the parties to bear their own costs throughout.