

Anita Sachdeva Vs. Deepak Kumar Sachdeva

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Court : Delhi

Decided On : Jun-13-2007

Reported in : 142(2007)DLT550

Judge : S. Muralidhar, J.

Acts : Code of Civil Procedure (CPC) - Order 6 Rule 17; Code of Criminal Procedure (CrPC) - Sections 340

Appeal No. : FAO 347/1996

Appellant : Anita Sachdeva

Respondent : Deepak Kumar Sachdeva

Advocate for Def. : D.K. Malhotra and ; Rajesh Malhotra, Adv.

Advocate for Pet/Ap. : Inderjeet Sharma, Adv

Disposition : Appeal dismissed

Judgement :

S. Muralidhar, J.

1. This appeal by the wife is directed against the judgment and order dated 28.9.1996 passed by the Additional District Judge Delhi in HMA No. 363 of 1990. By the impugned judgment the trial court dissolved the marriage between the

parties both on the ground of desertion as well as on the ground of cruelty.

2. The facts leading to the filing of this appeal are that the parties are married on 11.12.1986. In March 1987, while she was in the family way, the appellant left the matrimonial home and insisted that unless the respondent here set up a separate residence she would not come back to the matrimonial home. It is stated that the appellant returned in June 1987 when a separate kitchen was arranged by the respondent. Again in September 1987 the father of the appellant took the appellant to her parents' house for the delivery of the child. A male child was born on 24.10.1987. Thereafter, despite the persuasion of the respondent the appellant did not return to the matrimonial home. Even after the respondent got a kitchen and toilet constructed separately, the appellant did not return.

3. The admitted position is that the parties approached the Delhi Legal Aid Cell in August 1989 and made the following statements before the Secretary Legal Aid:

Statement of Deepak Sachdeva on S.A.

I am ready to keep my wife Smt. Anita Sachdeva with me and undertake to keep with me with respect, dignity and love. There will be no difficulty or any kind of harassment to her. I will maintain her and the child within my means.

Sd/-

Secretary

Sd/- Deepak Sachdeva 7.10.89

Statement of Anita Sachdeva on S.A.

I have compromised with my husband and am ready to live with him. I also undertake to live with him with respect and love. There will be no quarrel in future between us now. I also undertake to perform all marital duties/obligations towards my husband.

Sd/-

Secretary

Sd/- Anita Sachdeva 7.10.89

Statement of Smt. Anita Sachdeva, w/o Deepak Sachdeva on S.A.:

I do not want to go back to my matrimonial home to live with my husband Deepak Sachdeva and wish to seek divorce from him. therefore, my reconciliation proceedings be withdrawn.

Sd/-

Secretary, DLAC

24.10.89

4. The case of the respondent before the trial court was that divorce should be granted both on the grounds of desertion as well as cruelty. As regards the ground of desertion the defense of the appellant before the trial court was that the mandatory two year separation period that was required was not existent in the present case and therefore the petition was not maintainable. In order to appreciate this contention a few dates may be relevant to be noticed.

5. As already noticed the marriage was performed between the parties on 4.12.1986 and although the appellant left the matrimonial home initially in March 1987, she returned. Again she left the matrimonial home in September 1987. The divorce petition was filed on 7.5.1990. Computed from the date of separation being September 1987, the petition would have been within time. However, it is not denied that pursuant to the parties appearing before the Delhi Legal Aid Cell, they lived together for about 17 days from 7.10.1989 to 23.10.1989. It is contended by the appellant that this living together for about 17 days constitutes a break in the two-year period and therefore the said two year period should be computed only from 24.10.1989 and not from September 1987.

6. On the part of the respondent it is contended that the mere fact that the parties lived together for 17 days, does not obliterate the second limb of the ground of desertion that there should be no intention of the parties to cohabit. It is submitted

that merely living together for 17 days would not break the two year period of separation. Secondly, it is contented that in any event in March 1992 the respondent here amended the petition for divorce on the ground of desertion and the amendment was allowed by an order dated 5.5.1992 of the trial court. The relevant portion of that order reads as under:

Present Counsel for the parties. Application under Order 6 Rule 17 CPC is of the petitioner. Amendment is being sought in respect of omission of marital status and the date when the respondent is alleged to have deserted the petitioner. The petitioner has explained as to why did he mention the date of desertion as September 1987. This was disputed by the respondent. According to her, she left on 24.10.1989. Explanation is that in response to the efforts of Legal Aid Board she only paid casual visit for a day or so without any intention to live permanently. Nature of amendment is technical and does not change the grounds of divorce. Mere Explanation is being added. Application is allowed subject to cost of Rs. 150/-. Amended petition has already been filed. List on 7.7.1992 for A.W.S. Application under Section 340 Cr.P.C shall be decided at the final stage.

7. The above order dated 5.5.1992 allowing the amendment was not challenged by the appellant. In fact a written statement was filed to the amended petition and a rejoinder thereto was also filed. The legal consequence of the amendment being allowed and not being challenged is that the respondent here was permitted to plead the continuation of the factum of desertion even beyond the two-year period after the so-called resumption of cohabitation between the parties.

8. Reliance is placed by the appellant on the judgment of the Division Bench of this Court in Santosh Kumari v. Prakash Sharma : AIR2001 Delhi376 to submit that the minute the parties live together for a certain period, the desertion was incomplete and, therefore, the question of its condensation would not arise. In that case, the parties were married on 23.6.1985 and separated on 9.11.1985. The petition for divorce was filed on 13.11.1987. However the parties lived together for a brief while from 9.11.1986 to 3.12.1986. In those circumstances, it was held that the intention of the offending party to desert the matrimonial home was not existent. In para 9 it was held as under:

9. It is not merely the physical putting of the two spouses together at a point of time which would make cohabitation but there being in a `state of things' the entry which ends up desertion. In the instant case, neither the learned Trial Judge nor the learned Single Judge attempted to find out as to who was responsible for disruption of that `state of things'. Admittedly, the appellant left her matrimonial home after four and half months of her marriage. It is unnatural for a newly married bride to start planning for dissolution of her marriage without any ostensible reason. Under the circumstances, we are inclined to hold that something must have happened so as to force her to leave her matrimonial home. However, the learned trial Judge had simply noted the grievance of the appellant of her leaving the matrimonial home due to maltreatment of her mother-in-law. It is obvious that the appellant does not accuse the husband for having turned her out of his house. This circumstance clearly shows that there was no animus on behalf of the appellant to desert the husband permanently forsaking the matrimonial bond and abandonment of the obligations of marriage on her part.

9. What is also significant is the statement made in that case which is recorded in para 10 of that judgment that there was no statement positively made by the appellant that she did not wish to live with her husband. This by itself, according to this Court, is a clearly distinguishing feature.

10. As far as the present case is concerned two distinguishing features stand out. First is the statement made by the appellant before the Delhi Legal Aid Cell on 24.10.1989. The appellant clearly stated that she did not want to live with her husband. The second distinguishing feature of course is that the respondent amended the application for divorce on the ground of desertion which amendment was allowed on 5.5.1992. The effect of the amendment was to plead a further two-year separation period from 17.10.1989 onwards. The order allowing the amendment was not challenged by the appellant. In fact the appellant filed a written statement to which a replication was filed by the respondent.

11. In view of these distinguishing features, this Court is not prepared to apply straightway the ratio of the Division Bench of this Court in Santosh Kumari. For the same reasons, this Court is also not inclined to follow the judgment of the learned

Single Judge of the Madhya Pradesh High Court in *Satrupa v. Basant Kumar* 2 (2000) DMC 109. On the other hand, the judgment of a Single Judge of this Court in *Satinder Lal Gupta v. Swarna Lata Gupta* : 18(1980)DLT15 , held that a mere resumption of cohabitation during the stay of the husband and in wife's house to explore the possibility of a settlement will not amount to condoning the cruelty on part of the wife. Even in *Dastane v. Dastane* : [1975]3SCR967 , it was held by the Hon'ble Supreme Court that condensation would mean two things : forgiveness and restoration of the offending spouse to the position he or she occupied prior to the offence. The Hon'ble Supreme Court relied upon a number of judgments of the English courts to hold that mere staying together for a brief while without resumption of cohabitation will not supply the intention not to desert. The Division Bench judgment of the Bombay High Court in *Narayan Shankar Gokhale v. Sudha Narayan Gokhale* 2 (1996) DMC 564 (DB) is also to the same effect and is appropriate to the instant case.

12. From the facts of the present case it is clear that the appellant herein did not wish to continue living in the matrimonial home. The brief period of 17 days of staying together, did not indicate that the factum of desertion did not continue for the two-year period.

13. For all of the above reasons, this Court is not prepared to interfere with the conclusions reached by the trial court that the factum of desertion stood proved. Since this Court is upholding the trial court judgment on the ground of desertion, it is not inclined to examine the other ground on which the divorce has been granted. The trial court judgment does not call for interference.

14. The appeal is dismissed, with no order as to costs.