

Smt. Leela Devi Vs. Suresh Kumar

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Court : Rajasthan

Decided On : Jul-05-1993

Reported in : AIR1994Raj128

Judge : Milap Chandra Jain, J.

Acts : Hindu Marriage Act, 1955 - Sections 13 and 13(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 23, Rule 1(4)

Appeal No. : S.B.C.M.A. No. 257/89

Appellant : Smt. Leela Devi

Respondent : Suresh Kumar

Advocate for Def. : M.L. Kala and; K.M. Singhvi, Advs.

Advocate for Pet/Ap. : R.R. Nagori, Adv.

Judgement :

Milap Chandra Jain, J.

1. These two appeals have been filed under Section 28, Hindu Marriage Act, 1955 (hereinafter to be called 'the Act') against the judgment dated September 25, 1989 of the learned District Judge, Merta, allowing the petition of the husband-petitioner Suresh Kumar moved under Section 13 of the Act, granting decree of divorce

against wife Leela Devi and also maintenance under Section 25 of the Act at the rate of Rs. 500/- per month to her. The Appeal No. 257/89 has been filed by Leela Devi for setting aside the decree of divorce granted against her. The Appeal No. 291/89 has been filed by Suresh Kumar for setting aside the order granting maintenance at the rate of Rs. 500/- per month. The facts of the case giving rise to these appeals may be summarised thus.

2. On March 2, 1983, the husband-petitioner Suresh Kumar moved a petition under Section 13 of the Act with the allegations, in short, as follows. The marriage in between the parties took place on June 19, 1975 at Nagaur. After some time of the marriage, difference in the behaviour of Leela Devi was noticed. This was at the instance of her parents. She started quarreling and insulting him. Her behaviour became very rude and intolerable. She did not care him. She started giving his money to her parents. On August 9, 1975, she left his house for her parents house while he was busy in puja. Despite several requests, she did not return and live with him. Gold and silver ornaments which were given to her in the marriage by him and his parents are with her. She was pregnant when she left his house on August 9, 1975. On April 20, 1976. she gave birth to a male child. Hemoved a petition under Section 9 of the Act for the restitution of conjugal rights. During the course of reconciliation, she refused to live with him. Thereafter, he filed a petition under Section 13 of the Act for divorce and under Section 25, Guardian & Wards Act for the custody of his minor son Avinash against her. She also filed an application under Section 125, Cr.P.C. against him. On her assurance that she would start living with him, he withdrew his both the said petitions but she never came and lived with him. In her reply to his previous petition moved under Section 13 of the Act, she stated that he (Suresh Kumar) is himself leading an immoral life, he used to visit women of easy virtues and return late in night in drunken state and used to beat her. These allegations were totally false and were made in order to defame him. They amounted to cruelty. Despite it, he always persuaded her to live with him but she never came back and lived with him. She is serving as a teacher in the Saraswati Bal Mandir, Nagaur on salary of Rs. 350/- per month. She is also earning by doing knitting work. Her total income is Rs. 1,000/- per month.

3. In her reply, Leela Devi admits that the marriage in between the parties took place on June 19, 1975 at Nagaur, she left the house of her husband in 1975, she gave birth to a male child on April 20, 1976, Suresh Kumar had also earlier filed a petition under Section 13 of the Act for divorce, another petition under Section 25, Guardians and Wards Act for the custody of their son Avinash, she also filed an application under Section 125, Cr.P.C. against him, reconciliation proceeding took place in the court of the District Judge, Nagaur in the previous divorce proceedings and all three cases were withdrawn by the parties. The remaining averments of the petition have been denied. It has further been averred that the behaviour and conduct of her husband had been very kantenkerous, he used to beat her, it became impossible for her to live with him and she was turned out from his house.. She also averred that on his assurance she started living with him in 1982 and lived for two months but again she was beaten by him and was forced to leave his house.

4. After framing necessary issues and recording the evidence of the parties, the trial Court held that Leela Devi herself left the house of her husband Suresh Kuraar without any reason on August 9, 1975, since then she has deserted him and he is entitled to get a decree for divorce. It has also been held that the previous petition moved under Section 13 of the Act did not act as a bar for the present petition and it is perfectly maintainable. Accordingly, petition under Section 13 was allowed, decree for divorce was granted and maintenance at the rate of Rs. 500/- per month was granted to Leela Devi as said above.

5. Efforts were made for the reconciliation in between the parties but they were not successful vide order-sheets dated February 5, 1992 of the files of both the appeals. Thereafter, dates were fixed for arguments in the appeals. The learned counsel for the parties did not seriously argue the appeals.

6. The first question for consideration is whether the learned District Judge, Merta did not grant proper opportunity to Leela Devi to meet her case and this resulted in the serious prejudice of her rights (ground No. 11 of the memo of appeal). By order dated August 20, 1988, the learned District Judge closed her evidence, observing that 35 dates had already been fixed for her evidence. Against this

order, S.B. Civil Revision Petition No. 468/88 was preferred by Leela Devi. This revision petition was decided on April 26, 1989. The operative part of this order runs as under:--

'Consequently, the revision petition is allowed, the order dated 20-8-88 passed by the District Judge, Merta is set aside and the petitioner Smt. Leela Devi is given one more opportunity for producing her witnesses before the trial Court on the following conditions :--

(1) She files duly filled up summons of her witnesses for service through process server the head of office and also for sending through registered/ A.D. post to the witnesses directly. In other words, three sets of summons in respect of each witness are to be filed;

(2) She files requisite process fee and duly filled up and stamped envelopes for registration;

(3) She takes summons 'dasti' for service by herself as provided under Order 16, Rule 7A of the Code;

(4) She deposits the amount of salary of one day of each Government servant and also amount of expenses for all her witnesses as directed by the trial Court;

(5) She deposits Rs.250/- as cost of this revision for the payment to the plaintiff;

(6) She takes repeated steps for the service of summons in emergent course upon the unserved witnesses within three days of the return of unserved summons;

(7) In case of failure of witnesses to appear before the trial Court despite service of the summons, she takes all necessary steps within a week of the date fixed (to be fixed by the trial Court) for the enforcement of their attendance by their arrest and/ or attachment of their properties as provided under Order 16, Rules 10 and 12 of the Code; and

(8) She seeks no adjournment.

The parties will appear before the learned District Judge, Merta on 18-5-1989.

The trial Court will pass necessary orders in the light of the above order, keeping in view the provisions of Order 16 of the Code and Rules 110, 111 and 116 of the General Rules (Civil), 1986. Abovementioned steps Nos. 1 to 5 will be taken within a week of the order of the trial Court fixing the date for the applicant-non-petitioner's evidence. After the receipt of a copy of this order, the case was taken up by the learned District Judge on May 19, 1989, 13th July, 1989 was fixed for her evidence and it was specifically directed the same day that she would take all necessary steps as per the above quoted order of the High Court. On July 13, 1988, the petitioner examined her father Ram Chandra N AW 3 and her counsel staled not to produce any other witness and accordingly her evidence was closed. It cannot, therefore, be saidthat the trial court did not grant proper opportunity to Leela Devi to meet her case. In his several applications, Suresh Kumar has stated that his wife Leela Devi was bent upon to delay the disposal of the case as far as possible. The aforesaid proceedings support his said version. The said revision petition was filed in this Court just to delay the disposal of the case. If it would not have been so, she would have taken necessary steps in compliance with the above quoted order of this Court for the production of her witnesses. Admittedly, she did not take a single step. She simply produced her father Ram Chandra NAW 3 on July 13, 1989.

7. The main question for consideration in this case is whether Leela Devi was turned out by her husband Suresh Kumar or she herself left living with her husband. The saying 'Man may tell lie but not the circumstances' aptly applies in this case. The following facts and circumstances are well proved from the evidence on record:

(i) Suresh Kumar repeatedly went to his father-in-law's house, requested his in-laws to send Leela Devi with him and request was also made to her to accompany him and start living with him.

(ii) Suresh Kumar filed petition No. 30/76 under Section 9 of the Act for the restitution of conjugal rights against Leela Devi. It was got dismissed by him on her assurance that she would start living with him vide his application dated Sept. 7, 1982 (paper No. 27C/3) and order-sheet dated Sept. 7, 1982 (paper No. 27C/2).

(iii) In the said case No. 30/76, Suresh Kumar v. Leela Devi, the District and Sessions Judge, Merta conducted reconciliation proceedings on March 18, 1978. The order-sheet of this date Ex. 11 states that Leela Devi stated that she was not willing to live with Suresh Kumar. It also states that Suresh Kuamr moved an application for referring the dispute in between the parties to some other person for settlement but Leela Devi did not agree to that also.

(iv) In her reply (paper No. A20/1-8), she has averred that Govind Ram and UmaShankar saved her while Suresh Kumar was beating and was attemp'ting to throw her from the third storey of the house vide para No. 1 of the additional pleas. It has also been averred in para? of the additional pleas that on her hue and cry while she was being beaten by Suresh Kuamr in the night, her parents and several persons of the locality including Tej Prakash and Pusa Ram were attracted. Admittedly, none of them (Govind Ram, Uma Shankar, Tej Prakash and Pusa Ram) has been produced by her in support of her version. She has produced her brother Govind Prakash NAW 2 and her father Ram Chandra NAW 3 only. No independent person has been produced in her evidence.

(v) Govind Prakash Advocate NAW 2 is the real brother of Leela Devi. He admits that no report was made in the police against Suresh Kumar. He also admits that the injuries of Leela Devi were never got examined by the Medical Jurist.

(vi) She has averred in para No. 2 of her additional pleas of the reply that her husband Suresh Kumar leads an immoral life and visits women of easy virtues. In para No. 2 of her previous reply Ex. 12, she has averred that her father-in-law Champa Lal had covetous eye on her and for this purpose, he took out the fuse of the electric connection and started behaving indecently with her. She has utterly failed to substantiate these wild allegations made against her husband and father-in-law. They show the extent to which she could make wild and false allegations.

(vii) In her previous reply Ex. 12, she has also averred that her husband Suresh Kumar wrote several letters to her in which he profusely abused and threatened her vide para No. 6 and 7. Admittedly, no letter has been produced.

(viii) Leela Devi admits in her cross-examination (paper No. B50/8) that she scribed the note Ex. 1 and it bears her signature. This note runs as under:--

^vki esMrs okyk dsl mBkys rks eSa Hkh ukxkSj lsdsl eSa Hkh mlh rkjh[k dks mBk yqaxh A esM+rk ls cPps okyk Hkh dsl mBkyasxs rksesa dsl mBk yqaxh vkSj mlh le; ls vki ds lkFk jgus dks rS;kj gw A

yhyk lksuh*

Her case is that she left living with her husband as she used to be mal-treated and beaten by him and he used to make demand for dowry. There is no condition in this note that she would not be beaten or mal-treated or he would not raise demand for dowry in this note Ex. 1. In other words, there is absolutely no reference on any of these points in this note.

(ix) Leela Devi has no regard for the truth. She has deposed that Suresh Kumar lived with her at her parents' house for two months in the year 1982 (Paper No. B50/4). She was confronted with her previous statement dated January 25, 1986 Ex. 13 recorded in miscellaneous case under Section 24 of the Act In between the parties wherein she stated that she lived with her husband Suresh Kumar at Ladnunand Nagaur for 15-20 days in all and, thereafter, did not live with him. Her brother Govind Prakash NAW 2 has disclosed in his cross-examination that during the period 1975 to 1983 Leela Devi lived only for 15 days with Suresh Kumar,

(x) The case of the petitioner Suresh Kumar is duly supported by his father Champa Lal AW 2, Ramesh Prakash Soni AW 3, Jorawar Mal AW 4 and Dev Mal AW 5 and prescription dated April 26, 1983 Ex.5, injury report dated August 19, 1980 Ex.4 and medical certificates recommending leave Exs. 6, 7, 8 and 9.

(xi) In para No. 10 of her reply dated February 14, 1981 Ex. 12, she has averred -

^bl izdkj dh ifjLFkfr;ksa esa vizkFkhZ ds fy,Hkh izkFkhZ ds lkFk oSokfgd lEcU/k foPNsn djus ds fy, fuosnu djus ds vfrfjDrekxs n`fVxkspj ugha gksrk A*

In para No. 14 she has again reiterated-

^blfy, izkFkhZ Lo;a Hkh mijksDr dkj.kksa oifjLFkfr;ksa esa izkFkhZ ds lkFk IEcU/k foPNsn djokus esa lger gSa A*

In view of these averments, her statement dated September 20, 1988 given in this case that she was and is willing to live with her husband Suresh Kumar stands falsified. in her cross-examination, she stated

^lqjs'k dk O;ogkj vHkh Hkh Bhd ugha gS blfy,eSa lqjs'k ds lkFk tkus dks rS;kj ugh gw A esjs dks lqjs'k ij rlyyh ugha gSblfy, eSa mlds lkFk tkuk ugha pkgrh A lqjs'k ds o;ogkj ls vHkh rd gekjs vkilsesa lkFk jgus dh dksbZ IEHkkouk ugha gSa A*

8. These circumstances leave no manner of doubt that Leela Devi herself left her husband's house on August 9, 1975 and since then she has deprived him of her company.

9. In para No. 12 of the petition, ground of cruelty, has also been taken. It has been averred in it that in her previous reply dated February 14, 1981 (Ex. 12) she made the following wild and false allegations against him:--

^blds vykok izkFkhZ Lo;a pfj=Hkz'V thoufcrk jgk gS vkSj og vdlj jkr dks nq'pfj= vkSjksa ds ikl tkrk Fkk vkSj dkQhjkr rd 'kjk Hkh fidj vkrk Fkk vizkFkhZ ds lkFk ekjihV fd;k djrk Fkk A*

In para No. 12 of her reply, Leela Devi admits that she made these averments in her previous reply Ex. 12. Similar averments have been made in para No. 2 of her written reply filed in this case. In her lengthy statement given in this case she has not said that her husband Suresh Kumar is leading immoral life and visited women of easy virtues. Her brother Govind Prakash NAW 2 and her father Ram Chandra NAW 3 have also said so. It is thus clear that these false and wild allegations were made by her against her husband without any basis or foundation. Name of any woman of easy virtues with whom Suresh Kumar had contact has not been disclosed. Such wild allegations amount to cruelty within the meaning of clause (1a) of Sub-section (1) of Section 13 of the Act. On this ground also, the decree granted by the trial court deserves to be confirmed.

10. Her case that she lived with her husband for two months in the year 1982 and as such the present divorce petition filed in the year 1983 was premature as provided in Section 13 of the Act. This objection has no substance. Her statement Ex. 13 was recorded on January 23, 1986 in [he Miscellaneous Case No, 8 86 started on her application moved under Section 24 of the Act. Therein she has specifically stated that she lived with her husband Suresh Kumar for 20-25 days in all after marriage. She has also stated that she has not lived with Suresh Kumar for last 7-8 years. She did not at all tell that she lived with him in the year 1982 for two months or so.

11. Issue No. 3 is based on the averments made in paras Nos. 1,2 and 4 of the additional pleas of her reply. Under the facts and circumstances as noted above these averments cannot be held proved. The learned trial court has rightly decided it against Leela Devi.

12. The withdrawal of the previous petition moved under Section 13 of the Act did not debar Suresh Kumar to move fresh petition with additional grounds. Admittedly, the husband withdrew his previous divorce petition and also petition moved for the custody of his minor son and the wife Leela Devi also withdrew her application moved under Section 125, Cr.P.C. She also admits that she gave the note Ex. 1 stating that she would start living with her husband soon after the cases filed against her are withdrawn. Admittedly, she did not thereafter live with Suresh Kumar for a single day. This gave rise to fresh cause of action to Suresh Kumar. This was not the subject matter of the first divorce petition. The provisions of Order 23, Rule 1(4), C.P.C. precludes the institution of a fresh petition in respect of the same subject matter which has been in the previous petition.

13. The petitioner's case of desertion is well proved from the evidence on record particularly the statement Ex. 13, referred to in para 10 (supra),

14. Thus there is no force in the appeal No. 257/89 Leela Devi v. Suresh Kumar.

15. There is great force in the appeal No. 291/89 Suresh Kumar v. Leela Devi so far as the trial court has directed that Suresh Kumar will continue to pay maintenance to Leela Devi at the rate of Rs. 500/- per month till her income is not

Rs. 2,000/- per month. It is open to both the parties to apply under Section 25 of the Act for the modification of the order regarding payment of maintenance at the rate of Rs. 500/- per month. Under these facts, circumstances and provisions of law, it is difficult to sustain this part of the order of the trial court. The limit of her monthly income should have been to the extent of monthly amount of maintenance.

16. Accordingly, the appeal No. 257/89 Leela Devi v. Suresh Kumar is dismissed. The appeal No. 291/89 Suresh Kumar v. Leela Devi is partly allowed. Suresh Kumar will continue to make payment of maintenance at the rate of Rs. 500/- per month till her monthly income from all sources is less than Rs. 500/-.

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