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Om Prakash Vs. Babli

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Court : Rajasthan

Decided On : May-13-1998

Reported in : II(1999)DMC619; 1998(3)WLC429

Judge : Rajendra Saxena and; J.S. Sidhu, JJ.

Acts : Hindu Marriage Act, 1955 - Sections 13 and 24

Appeal No. : Civil Misc. Appeal No. 127 of 1998

Appellant : Om Prakash

Respondent : Babli

Advocate for Def. : S.L. Yadav, Adv.

Advocate for Pet/Ap. : M.C. Jain, Adv.

Disposition : Appeal dismissed

Judgement :

Rajendra Saxena, J.

1. This appeal by the husband Rajesh Kumar is directed against the judgment and decree dated 5.1.1998 of the Judge, Family Court, Jaipur whereby he accepted the petition under Section 13 of the Hindu Marriage Act, 1955 of the wife Smt. Mamta now respondent and allowed her an ex-parte decree of divorce dissolving

the marriage of the spouses.

2. The facts are that the wife filed the petition aforesaid under Section 13 of the Act against the husband for a decree of divorce on the ground of cruelty stating that after they were wedded on 16.5.1992 they had cohabited for a period during which her husband and her in-laws used to beat and maltreat her so much so that she was denied food and medicine when indisposed till she was ultimately booted out from the matrimonial home by the husband on 28.6.1995. Adding that her sister who was likewise married with a brother of her husband had suffered an identical fate.

3. To begin with the husband appeared and contested the petition as well as the application under Section 24 of the Act filed by the wife together with the divorce petition. In the said application under Section 24 of the Act the wife was allowed maintenance pendente lite at the rate of Rs. 500/- per month from the husband. This maintenance pendente lite was not paid by the husband though he was afforded opportunities for the purpose. For this non-payment the husband's defence was struck off by the Judge, Family Court on 22.10.1997 when the case was adjourned on the wife's evidence to 5.1.1998. On that day (5.1.1998) the wife was ready with her evidence but the husband chose not to appear and instead submitted an application through his brother Gopal seeking an adjournment on the plea that he the husband could not himself appear for he was sick on that day. His application was turned down by the trial Judge and consequently he was proceeded against exparte. The wife examined herself as her solitary witness. After hearing her the trial Judge granted her ex parte decree of divorce as afore noticed.

4. The argument by the learned Counsel for the appellant husband before us in this appeal is that the trial Judge erred grievously by deciding the divorce petition the same day the wife adduced her evidence which consisted of her sole uncorroborated statement which was relied upon while granting the ex parte decree and that the trial Judge as well erred grievously by not allowing the application moved by the appellant through a brother for adjournment.

5. Needless to say the learned Counsel for the respondent in sum and substance maintained that the verdict of the Judge, Family Court was sound and just and called for no interference in appeal.

6. Undeniably the husband now appellant though he was afforded more than ample opportunities for making the payment did not pay the maintenance pendente lite allowed to the wife under Section 24 of the Act. The Judge, Family Court thereupon rightly struck off the defence of the appellant who was respondent in the divorce petition. On top of this the husband for reasons best known to him did not appear on 5.1.1997 when the case was fixed for evidence of the wife and instead resorted to the stratagem of filing an application through a brother seeking adjournment on a ground that was transparently manufactured. His application was rightly dismissed by the trial Judge. Assuming that the appellant husband had a right of cross-examination by absenting himself he chose not to exercise that right. As he was absent he was rightly proceeded against ex parte by the trial Judge. As the evidence of wife consisting of her sole statement was found by the trial Judge to be worthy of implicit reliance he committed no error not to speak of a grievous error by acting upon her statement on oath and allowing her ex parte decree of divorce on the ground of cruelty. There was no requirement under the law that there should always be some corroboration and if the evidence of a solitary witness is found worthy of implicit reliance as in the instant case that could always be acted upon. In this view of the matter the wife now respondent was rightly allowed the ex parte decree of divorce by the Judge, Family Court and this appeal is wholly bereft of merit. Accordingly this appeal is dismissed with costs which we assess at Rs. 1,000/.

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