

Raj Kumar Vs. Madhu

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Court : Rajasthan

Decided On : Nov-20-2006

Reported in : II(2008)DMC759

Judge : Gyan Sudha Misra and; Vineet Kothari, JJ.

Appellant : Raj Kumar

Respondent : Madhu

Disposition : Appeal allowed

Judgement :

ORDER

1. This appeal has been preferred by the appellant-Shri Raj Kumar who is the husband of the respondent Smt. Madhu who had filed an application before the Family Court at Jaipur for grant of decree of divorce under Section 13 of the Hindu Marriage Act, 1955 on the ground of desertion.

2. The case of the appellant-husband was that he was married with the respondent-wife Smt. Madhu on 2.12.1988 according to the Hindi religious' rites and although they lived together for almost two years and they were blessed with a daughter on 23.2.1990, a difference arose between the couple thereafter and respondent-wife left her matrimonial home in August, 1991 after which she never returned. It was also the case of the appellant-husband that even for the delivery of their daughter, the respondent-wife went to her parents' place and when a

daughter was born, it was not even informed to him about the birth of their daughter. The appellant-husband also complained that the respondent-wife never allowed him to lead a normal conjugal life as she never cooperated with him due to which he suffered great mental agony.

3. The respondent-wife-Smt. Madhu, however, refuted the case of the appellant-husband and stated that although she is married to the appellant-husband, his behaviour and the behaviour of his parents towards her was not normal as they had indulged in beating her and also often threatened her to leave his house, as a result of which she was compelled to leave the matrimonial house and had to live with her parents. She has asserted that she had sent the information to her husband and his family regarding the birth of their daughter, but no one came to take her back so that she could live with her husband normally. She also stated that she wants to lead a normal family life along with her husband and the daughter, provided he behaves properly with her and do not indulge in insulting her.

4. On the basis of the pleadings of the parties, the Family Court adjudicated the matter and arrived at a finding that the appellant-husband had failed to make out a case for grant of a decree of divorce as he could not establish his case of desertion at the instance of his wife.

5. Feeling aggrieved with the judgment and order of the Family Court, the appellant-husband has preferred this misc. appeal. During pendency of the appeal, the respondent-wife filed an application for enhancement of the amount of maintenance from Rs. 1,000 to a higher amount which this Court allowed by enhancing the amount of maintenance from Rs. 1,000 to Rs. 2,000 to be paid to the respondent-wife. The application on one occasion was listed for further enhancement of the amount and during pendency of the appeal, the appellant-husband made an offer that he is prepared to live with the respondent-wife along with the daughter if it is acceptable to her. In the alternative, it was also suggested that he would provide a separate accommodation at his residence so that his wife and his daughter could live in the residential premise and he would not disturb them in any manner and would also support them financially. As a last alternative,

he offered that he would agree even to pay permanent alimony to the respondent-wife if she agrees for a mutual decree of divorce.

6. At this juncture, the question cropped up as to whether the respondent-wife can be paid maintenance on month-to-month basis, who has adopted an extremely defiant attitude by not accepting any of the offers of her husband in the sense that she is neither prepared to live with him nor it is acceptable to her to agree for a decree of divorce even if permanent alimony is paid to her meaning thereby that month-to-month maintenance be paid to her and no decree of divorce should be passed in favour of the husband. The appellant and the respondent had also been summoned to this Court to appear in person and a question was put to the respondent-wife and his Counsel as to why any alimony or maintenance should be paid to her when she is refusing to join her husband and at the same time refusing to agree for a decree of divorce. It was also made clear to her that on perusal of the findings recorded by the Family Court it is difficult to uphold the finding of fact recorded by the Family Court that she is not guilty of desertion for if the wife, at some point of time, had left the house of her husband and refused to come back merely on account of certain incident complaining that she was ill-treated by her in-laws, the same cannot be treated as a ground weighty enough for the wife to leave her matrimonial home for all times to come and in case she insisted time and again that she is not prepared to live with her husband because she was ill-treated, it is definitely within the wisdom of the Court to assess the intention of the respondent-wife as to whether she is in fact interested in joining her husband or there exists justifiable reasons not to live with her husband. Under the existing fact and circumstances, we fail to understand how she can claim maintenance on permanent basis without agreeing for grant of a decree of divorce and at the same time refuse to live with her husband without just cause. When this question was put to the wife that she cannot be permitted to exploit the situation in her favour by resisting the decree of divorce and at the same time insist for grant of alimony/maintenance, time was sought on her behalf to file affidavit that she was not prepared to live with her husband because she would be ill-treated by him. She however could not substantiate this fact before us although she has filed an affidavit that she was not properly treated by her husband.

7. In our considered opinion even if the couple had a quarrel at some point of time, that isolated incident does not give a cause to either of them to break their matrimonial ties finally but thereafter if they have lived separate for unusually long number of years leading the relationship to a freezing point indicating no revival of their conjugal life, the obvious inference is that there is no intention on their part to live together. It is for this reason that the time period, during which couple have remained away from each other, is a factor to be taken into consideration while appreciating the evidence and circumstances before recording the finding of fact. In this matter the couple has been living separately ever since 1991 which means more than 15 years and in a situation of this nature, the Court although can appreciate the reluctance of the wife to join her husband's home, her defiance not to agree for a decree of divorce cannot be appreciated as it is difficult to accept a situation that merely because there had been some unpleasant incidents between the couple 15 years ago, it gives a right to the wife to have it both ways in the sense that she would neither agree to live with her husband nor would give her consent for a mutual divorce. If she insists on living separately without any subsequent cause, it has to be realised that the only way out is a decree of divorce provided the couple agrees to live separately and does not insist for a decree of divorce. But in case the husband insists on living together and in the alternative seeks a decree of divorce, the respondent-wife cannot be permitted to twist the entire situation in her favour both ways. As in the instant matter, the wife on the one hand is refusing to agree for a decree of divorce and on the other hand she is also refusing to live with her husband on some pretext or the other alleging apprehensions of ill-treatment. But we are not satisfied with the affidavit of the wife that the husband might ill-treat her even now merely for the reason that she had been ill-treated 15 years ago. But if she insists on living separately on unfounded apprehension, she cannot be allowed to resist the decree of divorce as there is no evidence in the instant matter to support the assertion of the wife that she would be ill-treated by her husband if she joins to live with him. We are, therefore, not prepared to accept her contention that she is justified in living separately and yet she should not be held guilty of deserting her husband and hence we do not agree with the finding recorded by the Family Court that the appellant-husband had failed to prove his case of desertion against his wife. The Family Court has failed to take

note of the fact that if the respondent-wife had an intention to come back to her husband during the proceedings before the Family Court, the matter would have concluded finally.

8. We have also taken note of the fact that after the appellant-husband lost his case before the Family Court as his application for grant of a decree of divorce was dismissed, the wife neither filed any application nor made a prayer to any Court that the husband should be directed to allow her to live at his residence. On the contrary, she has been insisting for grant of maintenance without any effort to live with her husband. In absence of any evidence that the husband had restrained her from living with him or, ill-treated her in any manner, she is not justified in our view to live separately and yet resist decree of divorce and claim maintenance without any just cause.

9. In our considered opinion alimony or maintenance would be justified in favour of the wife provided she makes out a case in her favour that it was impossible to live with her husband at his residence and for this strict proof is required in order to establish that it was impossible to live with her husband. The appellant husband is a Stenographer working in the Public Works Department in the Government of Rajasthan and in case the wife had been ill-treated by the husband, she could have raised her grievance before some Forum or could have filed an application before the Family Court that although she has made an offer to live with her husband, the husband has created impossible situation due to which she cannot live with him in which case her claim for alimony/maintenance could be held justified. But after talking to the couple in open Court, a reasonable inference could be drawn by us that the wife on the one hand has no intention to live with her husband but at the same time she is refusing to agree for a divorce and is more keen to seek maintenance on month-to-month basis.

10. In the wake of her defiance to join her husband without any reasonable or just cause, we consider it legally just and appropriate to hold that if the respondent-wife has failed to make out a case in her favour that the appellant-husband had made it impossible for her to live with him in her matrimonial home, her plea that a decree of divorce should not be granted and amount by way of maintenance

should be granted to her, is not legally justified as in any case, permanent alimony even if it is by way of a condition of divorce is usually granted only when a decree of divorce is acceptable to the wife in spite of the husband having failed to prove his plea for grant of a decree of divorce on any ground.

11. We, therefore, set aside the judgment and order of the Family Court which is based on unsustainable evidence. In fact we could have refrained from interfering with the order of the Family Court which has refused to grant a decree of divorce in favour of the husband if the respondent-wife had agreed to live with her husband as we have clearly put a question to her that she having already succeeded before the Family Court as the decree of divorce has not been granted to her husband, she was bound to live with her husband as no order of stay has been granted to the husband against refusal to grant a decree of divorce. But she has flatly refused to go back to her husband. We thus feel that there is no point in not granting a decree of divorce in favour of the husband and drag the litigation further. The claim for grant of maintenance or permanent alimony to the wife in view of her defiance to live with her husband is also not sustainable as we have already held that alimony would be justified in a matter where the husband fails to make out a case in his favour for grant of a decree of divorce and yet the wife agrees for grant of a decree of divorce to her husband on condition of payment of alimony or decree of divorce is granted by mutual consent on the settled terms and conditions. The instant case does not fall within the ambit of any of the categories and, therefore, the claim of alimony on behalf of the wife is not held to be sustainable.

12. However, the question regarding the grant of alimony to the daughter can still be considered by the Court in view of the ratio of the decision delivered in the matter of *Jasbir Kaur Sehgal v. District Judge, Dehradun* reported in : AIR 1997 SC3397 , where the learned Judges of the Apex Court have stated that while granting maintenance to the wife, an extended meaning has to be given to the concept of maintenance which will include the children also.

13. We have, therefore, considered the case of the daughter as to whether any amount can be paid to her by way of maintenance. We have been informed that

the daughter is 16 years of age and is still continuing her education. Therefore, we deem it appropriate to direct the appellant to pay a sum of Rs. 3,000 per month to his daughter continuously and in addition Rs. 1,000 shall be paid to her by way of enhanced maintenance as she would now be joining a college. Besides this, the husband is directed to provide the expenses of the marriage of his daughter. Considering his financial status, we deem it appropriate to direct that he shall pay a sum of Rs. 3,00,000 (Rupees three lacs) to the daughter at the time of her marriage as and when it takes place with further liberty to her to file an application for its enhancement for justifiable reason.

14. The marriage between the couple thus is annulled and a decree of divorce in favour of the appellant-husband is granted. However, their daughter Ms. Nikita would be entitled to the relief which has been granted to her favour as stated hereinbefore.

15. The appeal accordingly stands allowed with no order as to costs.

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