

Rajendra Kumar Vs. Smt.Leela Devi

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Court : Rajasthan Jodhpur

Decided On : Aug-21-2012

Appellant : Rajendra Kumar

Respondent : Smt.Leela Devi

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
Rajendra Kumar Vs. Smt. Leeladevi S.B. CIVIL MISC. APPEAL NO.2344/2007
Misc. appeal filed under Section 28 of the Hindu Marriage Act against the
judgment and decree dated 20.9.2007 passed by Additional District Judge, Sojat.
Date of Judgment:

21. 8.2012 HON'BLE MR. JUSTICE R.S. CHAUHAN Mr. C.P.Soni, for the
appellant. Mr. D.S.Udawat, for the respondent. The appellant has challenged the
judgment dated 20.9.2007 passed by the Additional District Judge, Sojat, whereby
the the learned Judge had dismissed the application filed by the appellant under
Section 9 of the Hindu Marriage Act, ('the Act', for short). Briefly, the facts of the
case are that the appellant- Rajendra Kumar, and respondent- Smt. Leeladevi
were married in 1995 according to Hindu rites and customs. After the marriage,
both the appellant and respondent resided as husband and wife at Jaitaran.
However, after some time, the respondent left her matrimonial home and 2 went to
her parental home without any reasonable cause. The appellant's father and other
relatives went and asked the respondent about her leaving the matrimonial home.
Then respondent's father assured that the mistake would not be perpetuated. After

four months, respondent expressed her willingness to come back to Jaitaran if the appellant would come to take her. The appellant went to pick her up. But her father and brother assaulted him. Subsequently, the respondent lodged a criminal case under Section 498-A IPC against the appellant. The appellant filed an application for restitution of conjugal rights. In order to buttress his case, the appellant-husband examined four witnesses. In turn, the respondent -wife examined three witnesses. After going through the oral and documentary evidence, vide judgment dated 20.9.2007, the learned Judge dismissed the application. Hence, this appeal before this Court. Mr. C.P. Soni, the learned counsel for the appellant, has vehemently contended that according to the appellant, the respondent-wife had left the matrimonial home for a period of 15 to 20 days. However, despite the lapse of the said period, she never came back to the matrimonial home. Moreover, in spite of his best efforts, the wife never came back to resume the matrimonial relationship. Therefore, he was entitled to a decree for 3 restitution of conjugal rights. According to the learned counsel, the learned Judge has erred in dismissing his application under Section 9 of the Act. On the other hand, Mr. D.S.Udawat, the learned counsel for the respondent-wife, has strenuously contended that the respondent had clearly stated in her testimony that she was subjected to mental and physical cruelties. According to her, the appellant used to consume liquor and, after drinking, use to misbehave with her. He also used to bring home his friends who after consuming liquor misbehaved with her. Therefore, she had ample justification for staying away from the appellant. Hence, the learned counsel has supported the impugned judgment. Heard the learned counsel for the parties, and perused the impugned judgment and the record. While considering an application for restitution of conjugal rights, the court is duty bound to see if alleged erring party has justifiable reason(s) for staying away from the spouse. A bare perusal of the testimony of the respondent-wife clearly reveals that according to her, the appellant used to consume liquor, and thereafter misbehave with her. She was not only subjected to mental and physical cruelties, but was even subjected to misbehaviour of appellant's friends. According to her, whenever she would complain about the misbehaviour to 4 her in-laws, instead of protecting her, they were in favour of the appellant. Thus, she was justified in staying away from the husband who had subjected her to mental and physical cruelties.

Moreover, according to both the counsels, wife was looking after the child born out of the wedlock. Since, the respondent wife had justifiable reasons not to resume the marital relations, the learned Judge was justified in dismissing the application under Section 9 of the Act. This Court does not find any illegality or perversity in the impugned judgment. This appeal being devoid of any merit is, hereby, dismissed. [R.S.CHAUHAN] J arti/sr.no.10

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