

Indira Kashyap

Vs

K. N. Kashyap

Petition for Special Leave to Appeal (Civil) No. 10058 of 1983

(R. S. Pathak, Ranganath Misra JJ)

01.05.1984

ORDER

1. This petition under Article 136 of the Constitution asking for special leave to appeal to this Court against the appellatant judgment of the High Court of Himachal Pradesh at Simla is by the side and challenge is to be appellate order upholding rejection of an application under Order 9, Rule 13 of the Code of Civil Procedure in a divorce proceeding. This Court initially issued notice to the respondent-husband and later required the three children of the parties also to appear with a view to exploring the possibility of a rapprochement. Parties and their children appeared and counsel for both the parties were heard at length. Counsel suggested that the correspondence between the parties which had been exhibited and heavily relied upon by High Court should be seen by us. We, therefore, called for the original document and deferred pronouncing our order until now.

2. The respondent-husband is a senior member of the Indian Administrative Service and at the relevant time was Excise and Taxation Commissioner of Himachal Pradesh at Simla. The wife served as a senior lecturer in Hindi in the Mata Sundari College at New Delhi. They were married in the year 1958 and out of the wedlock two sons and two daughters were born by one of the sons died. The other son and the two daughters are at present grown up.

3. The husband applied to the District Judge at Simla for a decree of divorce in June, 1977. On September 3, 1977 both spouses appeared before the District Court and at their suggestion the proceedings were adjourned till May 18, 1978 leaving a long gap for the parties to improve their mutual relationship. On the adjourned day the wife did not appear and the case was set ex parte and was adjourned to May, 26, 1978 for trial. On that day the husband's evidence was recorded and an ex parte decree for divorce was passed. On July 7, 1979 the wife applied under Order 9, rule 13 of the Code along with an application under Section 5 of the Limitation Act contending that she obtained knowledge of the ex parte decree on June 20, 1979 when one Asha Swarup informed her about it. The husband entered contest. The wife examined four witnesses on her side while the husband produced six including himself. Several documents were produced on either side. The learned District Judge dismissed the applications and maintained the ex parte decree. An appeal was carried to the High Court under Order 43, Rule 1 of the Code and that also was dismissed. This has led to the filing of the petition for special leave.

4. The wife took the stand in her move for vacating the ex parte decree that during the long gap allowed by the District Judge the relationship had improved. Between January 30, 1978 and February 3, 1978 the husband had come to New Delhi and was staying in the Himachal Pradesh Guest House where there were frequent meetings between the spouses and there was reconciliation. It was further claimed that on February 10, 1978 the husband's mother (and the wife's mother-in-

law) died at Patiala. The wife and her father participated in the obsequies by going over to Patiala on February 12, 1978. It was claimed that the father of the wife had give 'Pagri' according to the prevailing custom. The husband had represented to the wife that on May 18, 1978 to which the proceedings had been adjourned in Court, she need not appear as the husband would not press the application because of improvement of relationship between them. Notwithstanding such an assurance the husband acted fraudulently and keeping her away from Court on misrepresentation obtained an ex parte decree.

5. The learned District Judge rightly inquired into the correctness of the plea advanced by the wife that there was reconciliation after proceedings. The evidence in regard to reconciliation when the husband had once to Delhi between January 30, 1978 and February 3, 1978 was disbelieved; It was found that the wife had not been permitted to say in the house of the brother of the, husband at Patiala where the mother had died and the Pagri money which had been given by the wife's father had been returned on May, 2, 1978 under a covering letter - features which militated against the plea of reconciliation. A series of letters written by the wife to the husband or to Amit their son were marked as Exhibits R-17 to R.-46. The first group covering Exhibits R-17 to R. 26 was written from Patiala Circuits House to the husband or the son between February 17, 1978 and February 20, 1978 when the husband was participating in the obsequies. The remaining letter were written by the wife to the husband or Amit from Delhi between February 14, and 24 1978 and March 1, 1978. The District Judge relied upon their contents to negative the plea of reconciliation and the application was rejected on a finding that there was no sufficient cause for either condonation of delay or for the wife's absence from the Court on the date fixed for trial. The Court drew adverse inference against the wife for not examining her informer Asha Swarup.

6. The High Court in a carefully written judgment covered the same filed again and mainly relied upon two letter being Exhibit R-31 dated February 27, 1978 and a photograph with writings thereon dated May 7, 1978 Exhibit R-8. Reliance was also placed on the feature that the wife had gone to Simla between October 19, 1978 and October 25, 1978 and had lived for about two month at Naldehra a place 20 kilometers from Simla between May 15, to July 13, 1979, but never card to enquire about the proceedings.

7. The genuineness of the letters has not been disputed. In the letter marked Exhibit R.-31 the wife had given a detailed calculation of the total period of separation between the spouses and the calculation seems to cover without any break the period between June 27, 197 and the date of the letter that is, February 2, 1978. If there has been meetings at Delhi as alleged followed by reconciliation and living together in the later part of January and in the first part of February 1978 the calculation in Exhibit R-31 would be totally wrong. From the photograph and the writing thereon (Exhibit R-8) the High Court in our view has rightly drawn the conclusions that the wife did not want the marriage to be sustained and was not anxious for the company of the husband.

8. The courts below have rightly riled upon the documents in preference to oral evidence and their counsel had also suggested to us that the documents should be preferred to the oral evidence. It is on that basis that we had been requested to look into the documents before disposing of the applications for special leave one way or the other.

9. Two further feature in our opinion should be noticed to uphold the order of the High Court an dismiss the application for special leave. Firstly, the wife's father as also two of her brothers are advocates by profession. At one stage the father was representing her in the proceedings. Keeping track of the proceedings in Court therefore was not at all difficult so far as the wife was concerned.

Secondly Amit who is doing intermediate law and the two daughters, one of the whom has done her post-graduate course and the other is doing the same appeared before us and expressed natural indignation over the sufferings causes to there father and also to them by the mother. Since they are all grown up and capable of making reasonable assessment of events around them they would have known about reconciliation if it had been effected. To affection hungry children restoration of relationship between the parents would have been even of immense importance. They told us that there was not foundation for it in fact. One of the daughters when examined as a witness in the proceeding under Order 9, Rule 13 had deposed that way.

10. After looking into the documents and an giving our anxious consideration to the materials placed in the records we have no doubt that the courts below have taken the correct view both on the question of limitation as also on merit. We endorse their finding that there was not reasonable cause for excusing the delay in applying to the Court for vacating of the decree nor any reasonable cause on the part of the wife to be absent from the Court on May, 18, 1978 to which date the divorce proceeding had been adjourned. We have already indicated that the parties and the off springs of the wedlock had appeared before us. When we heard them in order to explore the possibility of reconciliation we gathered the impression that neither the husband nor the children of the marriage had any room in their lives for the petitioner. Ordinarily there would be no scope to entertain a petition for special leave in a matter arising out of an application under Order 9, Rule 13, of the Code. But as this matter was argued at length we had agreed to explore the possibility of reconciliation and the documents were looked into. We though it proper to give brief reasons for rejection of the application.

11. The petition for special leave to appeal is rejected.

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