

R. Balasubramanian

Vs

Vijayalakshmi Balasubramanian

Civil Appeal No. 2966 of 1997

(D.P. Wadhwa, M. B. Shah JJ)

11.08.1999

JUDGMENT

D.P. Wadhwa, J. –

1. This is husband's appeal. He filed a petition for divorce against respondent-wife under Section 13 of the Hindu Marriage Act, 1955 ('Act' for short) on the grounds of cruelty and desertion [Section 13(i-a) and 13(i-b)]. He succeeded in the family court to the extent that he was instead granted a decree of judicial separation under Section 13-A of the Act. Against the judgment of the family court wife filed an appeal in the High Court of Judicature at Madras. A Division Bench of the High Court by impugned judgment dated December 19, 1996 allowed the appeal and dismissed the petition of the husband on both the grounds of cruelty and desertion. Aggrieved husband has now come to this Court after obtaining leave to appeal.

2. A marriage was solemnised between the parties in accordance with Hindu rites on July 6, 1969. A son was born to them on February 12, 1971 and a daughter on May 19, 1975. Husband alleged that during all this period behaviour of the wife was cruel towards him. She suspected that he was having extra marital relations with his junior woman advocate. Husband is an income-tax practitioner. Wife also suspected that he was having illicit relation with another woman, wife of an acquaintance of the respondent. Husband also alleged that wife used to behave in erratic fashion and would consume overdose of sleeping pills. She also once threatened to commit suicide. All this wife did only to harass him. She would also pick up quarrels with the husband without any provocation on his part. Husband also complained that he was doing well in the profession and never wanted his wife to take up a job which she did against his wishes. On July 6, 1979 the couple celebrated their tenth wedding anniversary. Husband then said that he was shocked when his wife told him that she was pregnant. He said this could not be so as he had ceased marital relation with her since June, 1977. He then said that wife, the respondent, left the matrimonial home on September 10, 1979 leaving the two minor children to his love and care. On verification husband found that his wife had gone to her parents house and since then she has been living there. She gave birth to a girl on March 21, 1980 at her parents house, which, according to the husband, is a mystery to him. He said conduct and character of the wife was not above board.

3. Wife denied all these allegations and rather alleged cruel behaviour on the part of the husband. She said she took up the job to escape constant nagging by her husband. She said she left for her parents house to perform certain Pooja and did not take her two children with her as they were school going. She denied that there was no marital relation between her and her husband. She said she informed her husband in July, 1979 itself that after cohabitation she had skipped her periods. She denied that she left the house of her husband without his knowledge. She said it was only after

taking his permission. She said the third child, the girl named Kamakshi, is born to her of her husband and she said that she was willing to undergo all scientific tests to prove that the appellant was the father of her child Kamakshi. She said was always prepared to live with her husband and was even anxious for that for the sake of her children. She said the allegation of husband against her moral character is itself a cruelty entitling her to live separately from her husband and also to claim maintenance.

4. Mr. A.B. Rohatgi, learned counsel appearing for the husband submitted that as far as the allegation of adultery against respondent-wife is concerned he is not going to press. That may be good of him but the fact remains that the allegation that the wife had sexual intercourse with a person other than the husband is a serious allegation against the wife and shows the cruel conduct of the husband entitling the wife to seek relief against him under the Act or otherwise. It was submitted that on July 6, 1979 parties celebrated their tenth wedding anniversary. That would show that both were living together and it is apparent that the husband has condoned the cruelty, if any, alleged by him against the wife. Husband has not gone to see his third child Kamakshi since her birth. High Court has rejected his plea that he ever made attempt to bring his wife and the daughter, who was born to her at her parents' house. High Court has considered pleadings and the evidence on record threadbare and come to the conclusion that the case of cruelty and desertion set up by the husband has not been proved. We agree with the High Court and rather we find that it is husband, who is in wrong.

5. We, therefore, uphold the order of the Division Bench of the High Court and dismiss the appeal with costs. Petition seeking divorce filed by the appellant is dismissed.

Appeal dismissed.