SUPREME COURT OF INDIA

Rishikesh Sharma

Vs

Saroj Sharma

C.A. No.....Of 2006 (Arising Out of S.L.P. (C) No. 17407 of 2005)

(Dr. Ar. Lakshmanan and Tarun Chatterjee, JJ)

21.11.2006

JUDGMENT

DR. AR. LAKSHMANAN, J.

1. Leave granted.

2. The husband is the appellant before us. The respondent is his wife. They got married according to the Hindu rites and customs in the year 1972. After three years of marriage a daughter was born of the wedlock. Because of the misunderstanding between them the respondent started living separately from her husband from the year 1981 onwards and is working in the Social Forestry Department. The respondent also filed several criminal proceedings against her husband with which we are not concerned in this Appeal.

3. In the year 1989 the appellant filed a Petition for a decree of dissolution of marriage on the ground of mental cruelty and the respondent having deserted him without any reasonable cause. The District Judge, Gwalior, dismissed the Petition filed by the husband for dissolution of the marriage. The Appellant filed a First Appeal in the High Court under Section 28 of the Hindu Marriage Act. The High Court also dismissed the Appeal of the appellant. The appellant has therefore questioned the correctness of the order passed by the High Court in the above Appeal.

4. We heard Mr. A.K. Chitale, learned Senior Counsel and Mr. S.S. Dahiya, learned counsel for the respondent and perused the judgment passed by both the Trial Court and also of the High Court. It is not in dispute that the respondent is living separately from the year 1981. Though the finding has been rendered by the High Court that the wife last resided with her husband up to 25.3.1989, the said finding according to the learned counsel for the appellant is not correct. In view of the several litigations between the parties it is not possible for her to prosecute criminal case against the husband and at the same time continue to reside with her husband. In the instant case the marriage is irretrievably broken down with no possibility of the parties living together again. Both the parties have crossed 49 years and living separately and working independently since 1981. There being a history of litigation with respondent-wife repeatedly filing criminal cases against the appellant which could not be substantiated as found by the Courts. This apart, only child born in the wedlock in 1975 has already been given in marriage. Under such circumstances the High Court was not justified in refusing to exercise its jurisdiction in favour of the appellant. This apart, the wife also has made certain allegations against her husband that the husband has already remarried and is living with another lady as stated by her in the written statement. The High Court also has not considered the allegations made by the respondent which have been repeatedly made and repeatedly found baseless by the Courts.

5. In our opinion it will not be possible for the parties to live together and therefore there is no purpose in compelling both the parties to live together. Therefore the best course in our opinion is to dissolve the marriage by passing a decree of divorce so that the parties who are litigating since 1981 and have lost valuable part of life can live peacefully in remaining part of their life.

6. During the last hearing both the husband and wife were present in Court. Husband was ready and willing to pay lumpsum by way of permanent alimony to the wife. The wife was not willing to accept the lumpsum but however expressed her willingness to live with her husband. We are of the opinion that her desire to live with her husband at this stage and at this distance of time is not genuine. Therefore, we are not accepting this suggestion made by the wife and reject the same.

7. In the result, the Appeal filed by the husband stands allowed. There will be a decree of dissolution of marriage in favour of the husband. No costs.

J