

# SUPREME COURT OF INDIA

Raj Kumar Rana

Vs.

Rita Rathore

C.A.No.6161 of 2010

(V.Gopala Gowda and R.Banumathi JJ.)

10.03.2015

## JUDGMENT

### **R. BANUMATHI, J.**

1. This appeal arises out of the judgment dated 10.11.2008 passed by the High Court of Himachal Pradesh at Shimla in FAO (HMA) No.266/2004, dismissing the appellant's appeal and declining to pass the decree of divorce.

2. Marriage between the appellant-husband and respondent-wife was solemnized on 10.5.1997 and both of them resided together as husband and wife for about nine months. Case of the appellant is that both parties were employed in District Hospital at different places. Appellant was transferred to District Hospital, Solan, Himachal Pradesh and he started living at Solan. By their joint efforts, they were able to get the respondent transferred to Solan. The respondent-wife became pregnant and she went to her parents house at Nirsu in Rampur, Himachal Pradesh. Case of the appellant is that in February 1998, respondent-wife left Solan for delivery at her parents house at Rampur and thereafter she never came back and never stayed with the appellant. Parties are said to have separated since February 1998 and a male child was born out of their wedlock at Rampur on 2.6.1998. Appellant alleged that despite his request, respondent continued to stay with her child at her parents house at Nirsu in Rampur. In spite of being transferred to Solan, respondent refused to join the appellant at Solan and instead she got herself adjusted at IGMC Shimla. According to the appellant-husband, when he requested the respondent-wife to part ways by mutual consent, respondent and her parents demanded Rs.10,00,000/- as maintenance. The appellant filed petition for divorce under Section 13 of the Hindu Marriage Act against the respondent on the ground

of cruelty and desertion. Vide its judgment dated 2.1.2003, District Judge, Solan dismissed the petition both on grounds of cruelty and desertion. Regarding desertion, trial court observed that parties have strained relations for long time and are residing separately on account of exigencies of their services and not on account of hostilities and there was no animus deserendi on the part of the respondent in living separate. The appellant preferred appeal before the High Court and vide its judgment dated 10.11.2008, the High Court dismissed the appeal. In this appeal, the appellant challenges the correctness of the dismissal of his divorce petition.

3. Vide order dated 25.6.2014, while referring the parties to mediation, this Court has asked the appellant whether he will be willing to deposit a sum of Rs.10,00,000/- before this Court by way of permanent alimony as well as maintenance for the male child from the marriage. Learned counsel for appellant/husband submitted that the sum of Rs.10,00,000/- will be deposited within six weeks from the date of the order. As per the order, commencement of mediation was made conditional on deposit of Rs.10,00,000/-. In compliance with the direction of this Court, the appellant has deposited a sum of Rs.10,00,000/-. The parties were referred to the Mediation Centre at Shimla. To enable the respondent-wife to travel to Shimla, a further amount of Rs.25,000/- was paid to the respondent-wife by way of demand draft.

4. Expressing her consent for divorce and stating that the amount of Rs.10,00,000/- deposited by the appellant in this Court be paid to her as permanent alimony and also as maintenance of the minor son, the respondent has filed affidavit. In the affidavit, the respondent has stated as under:-

"It is most humbly submitted that in the interest of my son and overall bringing an end to the disputes, I am agreeable for a Divorce. However all the allegations/contentions raised in Divorce Petition and the present Special Leave Petition are denied. The Appellant has made bald and false allegations in these Petitions. In these circumstances, this Hon'ble Court may protect the interest of the Respondent herein by recording that the Divorce is being granted by mutual consent and accordingly pass appropriate orders in the interest of justice."

5. Pursuant to the affidavit filed by the respondent-wife, taking into consideration that the relationship between the parties are strained for quite a long time, judgments of both the courts below are set aside and this appeal is allowed. In order to render justice between the parties, in exercise of our power under Article

142 of the Constitution of India, the marriage between the appellant and the respondent is dissolved by mutual consent. The amount of Rs.10,00,000/- lying in this Court's deposit be invested in the name of minor son represented by the respondent in any one of the Nationalized Bank as per the choice of the respondent till he attains majority. The respondent is permitted to withdraw the periodical interest accrued thereon once in a year directly from the bank and the same shall be utilized for the welfare of the minor son. No costs. Copy of this judgment shall be sent to the District Judge, Solan, H.P.