SUPREME COURT OF INDIA

Manju Kumari Singh @ Smt. Manju Singh

Vs.

Avinash Kumar Singh

C.A.No.6988 of 2018

(Abhay Manohar Sapre and Uday Umesh Lalit,JJ.,)

25.07.2018

JUDGMENT

Abhay Manohar Sapre,J.,

1. Leave granted.

2. This appeal is filed by the wife against the final judgment and order dated 28.02.2017 passed by the High Court of Jharkhand at Ranchi in F.A. No. 51 of 2004 whereby the High Court dismissed the appeal and affirmed the judgment dated 23.12.2002 passed by the Principal Judge, Family Court, Singhbhum East at Jamshedpur in Matrimonial Suit No.40 of 2001 by which the marriage between the appellant-wife and the respondent-husband was dissolved.

3. Few facts need to be mentioned infra to appreciate the short issue involved in the appeal.

4. The appellant is the wife whereas the respondent is the husband. The appellant and the respondent were married on 16.02.1997. The appellant is serving as a Teacher whereas the respondent is a practicing advocate. The couple was blessed with a daughter in 1998 and she has been living with the appellant since birth. As on this date, the daughter is studying and is of marriageable age. Unfortunately, due to various reasons, their married life was not cordial soon after the marriage, which eventually led to filing of divorce petition (Matrimonial Suit No.40/358 of 2001) by the respondent (husband) in the year 2001 against the appellant (wife) in the Family Court, Singhbhum East, Jamshedpur.

5. The respondent sought divorce inter alia on the ground of cruelty and desertion against the appellant. The appellant denied the allegations of cruelty/desertion and contested the suit by joining issues.

6. By order dated 23.12.2002, the Family Judge dissolved the marriage between the appellant-wife and the respondent-husband on the ground that the allegation of cruelty and

desertion against the appellant was proved and the suit filed by the respondent-husband for the dissolution of marriage was decreed.

7. The appellant felt aggrieved, filed First Appeal (51 of 2004) before the High Court of Jharkhand at Ranchi. By order dated 24.09.2008, the High Court affirmed the order passed by the Family Judge.

8. Challenging the said order, the appellant-wife filed an appeal before this Court. Vide order dated 09.01.2015, this Court remanded the matter to the High Court for fresh hearing. Against the said order, the respondent-husband filed a review petition, which was dismissed vide this Court's order dated 14.07.2015.

9. After remanding, the High Court again heard the matter. By impugned order, the High Court dismissed the appellant's appeal and affirmed the order of the Family Judge and, in consequence, allowed the respondent's divorce petition by granting a decree of divorce in his favour on the ground of desertion. It is against this order of the High Court, the wife (appellant herein) felt aggrieved and filed the present appeal by way of special leave in this Court.

10. We have heard the learned counsel for the parties, respondent-in-person and perused the record of the case.

11. It is not in dispute that the parties have been living separately for the last more than a decade. All attempts of reconciliation through mediation have failed. It is, therefore, clear that there is absolutely no chance of both living together to continue their marital life.

12. In *Naveen Kohli v. Neelu Kohli*[1], the husband had filed petition seeking divorce on the ground of cruelty on the part of wife. While the matter was pending in the Trial Court, efforts were made for amicable settlement but without any success. Finding that there was no cordiality left between the parties to live together, the Trial Court ordered dissolution of marriage and directed the husband to deposit Rs.5 lakhs towards permanent maintenance of the wife. The appeal at the instance of the wife having been allowed, the husband approached this Court by filing an appeal. The observations of this Court in paragraphs 86 and 90 are relevant for our purposes and the same are quoted hereunder:

> "86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

90. Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955. In the extraordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs 25,00,000 (Rupees twenty-five lakhs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs 5,00,000 (Rupees five lakhs with interest) deposited by the appellant on the direction of the trial court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs 20,00,000 (Rupees twenty lakhs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant."

13. In *Sanghamitra Ghosh v. Kajal Kumar Ghosh*[2], it was observed in paragraphs 18, 19, 20 and 21 as under:

"18. In the instant case, we are fully convinced that the marriage between the parties has irretrievably broken down because of incompatibility of temperament. In fact there has been total disappearance of emotional substratum in the marriage. The matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, therefore, the public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto as observed in Naveen Kohli case(2006) 4 SCC 558.

19. In view of peculiar facts and circumstances of this case, we consider it appropriate to exercise the jurisdiction of this Court under Article 142 of the Constitution.

20. In order to ensure that the parties may live peacefully in future, it has become imperative that all the cases pending between the parties are directed to be disposed of. According to our considered view, unless all the pending cases are disposed of and we put a quietus to litigation between the parties, it is unlikely that they would live happily and peacefully in future.

In our view, this will not only help the parties, but it would be conducive in the interest of the minor son of the parties.

21.On consideration of the totality of the facts and circumstances of the case, we deem it appropriate to pass the order in the following terms:

(a) the parties are directed to strictly adhere to the terms of compromise filed before this Court and also the orders and directions passed by this Court;

(b) we direct that the cases pending between the parties, as enumerated in the preceding paragraphs, are disposed of in view of the settlement between the parties; and

(c) all pending cases arising out of the matrimonial proceedings including the case of restitution of conjugal rights and guardianship case between the parties shall stand disposed of and consigned to the records in the respective courts on being moved by either of the parties by providing a copy of this order, which has settled all those disputes in terms of the settlement."

14. In our considered view, in order to ensure that the parties may live peacefully in future and their daughter would be settled properly in her life, a quietus must be given to all litigations between the parties. Indeed both the learned counsel appearing for the parties too agreed for this. Such an approach, in our view, would be consistent with the approach adopted by this Court in the aforesaid matters. Consistent with the broad consensus arrived at between the parties, we consider it just and proper to dispose of the appeal with the following directions:-

(i) The respondent-husband will pay a total sum of Rs. 10,00,000/-(ten lakhs) in two instalments towards permanent alimony and maintenance to the appellant and daughter.

(ii) First instalment of Rs. 5,00,000/-would be paid by the respondent- husband to the daughter by way of a Demand Draft drawn in favour of his daughter within three months from the date of this order.

(iii) Second instalment of Rs.5,00,000/- would be paid by the respondent-husband to the daughter by way of a Demand Draft drawn in favour of his daughter within four months from the date of payment of first instalment.

(iv)All allegations made in pending cases arising out of the matrimonial proceedings including the one out of which this appeal arises are expunged. All proceedings pending in various Courts, if any, shall stand disposed of accordingly.

15. In view of the peculiar facts and circumstances of this case, we also consider it appropriate to exercise our power under Article 142 of the Constitution in order to do substantial justice to the parties to this appeal and accordingly declare dissolution of their marriage subject to fulfillment of the aforesaid conditions.

16. With the aforesaid directions, the appeal stands accordingly disposed of. No costs.

Judgment Referred.
[1](2006) 4 SCC 0558
[2](2007) 2 SCC 0220