SUPREME COURT OF INDIA

Munish Kakkar

Vs.

Nidhi Kakkar

C.A.No.9318 of 2014

(Sanjay Kishan Kaul and K.M.Joseph,JJ.,)

17.12.2019

JUDGMENT

Sanjay Kishan Kaul,J.,

1. Marriages are said to be made in heaven. They are broken on earth. We are faced with a scenario where for the better part of almost two decades, the parties before us, who are husband and wife, have been engaged in multifarious litigation, including a divorce proceeding, which forms subject matter of the appeal before us.

2. The marriage between the parties was solemnized at Jalandhar according to Hindu rites on 23.4.2000, where apparently the family of the appellant was based. The family of the respondent is stated to have been based in Canada. It appears from the allegations that the constant period of stay of the parties was only for about two months, with the respondent moving back and forth, but, undisputedly on 24.5.2001, the respondent left for Canada to be with her family. It is the case of the appellant that this was not with his consent, while on the other hand it is the case of the respondent that she was making an endeavour for immigration of the appellant to Canada, and at his behest. The respondent did not return to India till 16.8.2002, which was soon after she obtained Canadian citizenship on 6.8.2002. It is also an admitted position that during this time, no papers were filed with the Canadian authorities for immigration of the appellant and that the respondent puts the blame on incomplete papers sent by the appellant. As to why the papers could not be completed over such a long period of time is a moot point. It does appear that the respondent was apparently interested in Canadian citizenship and only after having achieved that, came back to India.

3. The parties resided for barely two and a half months together, when a fight is stated to have broken out between the parties and the respondent again left the company of the appellant. There was an intervention by the Panchayat and the parties were asked to reside separately from their family, in a rented accommodation, but that too did not last for more than a couple of months. The respondent is stated to have left the common residence on 15.4.2003 after an altercation and then again left for Canada.

4. The aforesaid resulted in the appellant filing a petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty, on 16.5.2003.

5. It is the appellant's case that he had reasonable apprehension about the safety of his life and limb, and that the respondent was really not interested in living with the appellant in India, away from Canada. The loneliness and lack of co-habitation is stated to have caused physical and mental torture. The appellant also sought to make out a case that the respondent was suffering from depression and was on medication. Despite the appellant's stable job in India, the respondent kept on pressuring him to shift to Canada, and despite his reluctance he had signed the immigration papers in order to save his marriage. However, the papers were never submitted. In fact, he came to know that the respondent herself had reached Canada on improper travel documents and, thus, could not apply for the appellant's immigration. It is the further submission of the appellant that all stridhan was taken away by the respondent in April, 2001 itself. The appellant has alleged that the respondent was extremely suspicious and maligned his character in front of his colleagues on the basis of alleged liaisons with his colleagues.

6.The respondent naturally had her own version and claimed to have travelled to Canada to meet his insistence of immigrating to Canada, though she admitted that she had not taken any documents of the appellant with her to Canada. She, in fact, blamed the appellant of abandoning her and made various other allegations including of dowry, physical assault and extra-marital affairs. In respect of her continued stay in Canada she claims to have had an "insect bite"! In her testimony, she claims that an unconsented abortion took place when she was taken to a doctor, though it is an admitted position that she never made a complaint in respect thereof. The version of the appellant is different, i.e., that she was taken for general medical treatment, and was in fact never pregnant.

7. The Additional District Judge, Nawanshahr vide judgment and order dated 9.12.2009, granted a decree of divorce against which an appeal was filed before the High Court. The learned Single Judge vide impugned order dated 10.2.2011, however, set aside the decree of divorce.

8. We may note here that the trial court's view was predicated on inter alia the continued character assassination by the respondent of the appellant, since she had neither been able to prove any extra-marital affair of the appellant, nor could she prove the factum of forcible termination of pregnancy.

9. The learned Single Judge of the High Court, however, framed six primary grounds to examine the case for dissolution of marriage. It is the finding in the impugned order that while the parties did stay apart, no sense of anger could be made out to display any real discord between the parties herein; though there were adjustment issues. The learned Judge took note of the allegations regarding extra-marital affairs made by one another, including the allegation of having a child out of the wedlock, but came to the conclusion that serious imputation could not be attached to the same. The same were attributed to "inflamed

passions", which resulted in these grave suggestions; but were opined to not knock down the fundamental walls of marriage. It was concluded that neither party had transgressed the limits in making imputations regarding each other's extra-marital affairs and, thus, this would not constitute cruelty. The aspect of physical assault alleged by the parties was also said not to have been established.

10. Insofar as the aspect of irretrievable breakdown of the marriage is concerned, it was opined that since that did not form part of statutory law in India, that could not be treated as a ground.

11. It is relevant to note that at various times there were efforts made to mediate the dispute, which failed. Multiple efforts have been made even by this Court, but to no avail. In a last ditch effort, the parties were referred to a counselor after one of us, with the consent of the parties, had taken the matter in chambers. The counselor/psychologist, however, opined that the separation of sixteen (16) years since 2003 had made both the parties bitter and cynical about the relationship and there was no sign of any affection or bonding on either side. The parties apparently had no history of pleasant time and only feelings of resentment arising from the several court cases. There was also no family support from either side. This would also be apparent, in our view, from the fact that there are stated to be multiple cases filed by both set of family members against the opposite party.

12. We had, thus, no option but to hear the parties at some length. Despite our query of whether the respondent would like to be assisted by a counsel, she refused the same and wanted to address the Court personally, having acquired a law degree herself.

13. We have given our deep thought to the matter and to the discussions in the trial court judgment and the High Court judgment. Learned single Judge appears to have brushed aside the allegations of extra marital affairs as also of a child out of the wedlock as part of the wear and tear of marriage and as "inflamed passions." The fact, however, remains that the relationship appears to have deteriorated to such an extent that both parties see little good in each other, an aspect supported by the counselor's report; though the respondent insists that she wants to stay with the appellant. In our view, this insistence is only to somehow not let a decree of divorce be passed against the respondent. This is only to frustrate the endeavour of the appellant to get a decree of divorce, completely losing sight of the fact that matrimonial relationships require adjustments from both sides, and a willingness to stay together. The mere say of such willingness would not suffice.

14. It is no doubt true that the divorce legislations in India are based on the 'fault theory', i.e., no party should take advantage of his/her own fault, and that the ground of irretrievable breakdown of marriage, as yet, has not been inserted in the divorce law, despite a debate on this aspect by the Law Commission in two reports.

15. We, however, find that there are various judicial pronouncements where this Court, in exercise of its powers under Article 142 of the Constitution of India, has granted divorce

on the ground of irretrievable breakdown of marriage; not only in cases where parties ultimately, before this Court, have agreed to do so but even otherwise. There is, thus, recognition of the futility of a completely failed marriage being continued only on paper.

16. We have noticed above that all endeavours have been made to persuade the parties to live together, which have not succeeded. For that, it would not be appropriate to blame one or the other party, but the fact is that nothing remains in this marriage. The counselor's report also opines so. The marriage is a dead letter.

17. Much could be said about what the learned single Judge has observed as wear and tear of marriage and "inflamed passions", but wisdom requires us to not traverse that same path, as we feel that, on the ground of irretrievable breakdown of marriage, if this is not a fit case to grant divorce, what would be a fit case!

18. No doubt there is no consent of the respondent. But there is also, in real terms, no willingness of the parties, including of the respondent to live together. There are only bitter memories and angst against each other. This angst has got extended in the case of the respondent to somehow not permit the appellant to get a decree of divorce and "live his life", forgetting that both parties would be able to live their lives in a better manner, separately, as both parties suffer from an obsession with legal proceedings, as reflected from the submissions before us.

19. We may note that in a recent judgment of this Court, in *R. Srinivas Kumar v. R. Shametha,*[1]to which one of us (Sanjay Kishan Kaul, J.) is a party, divorce was granted on the ground of irretrievable breakdown of marriage, after examining various judicial pronouncements. It has been noted that such powers are exercised not in routine, but in rare cases, in view of the absence of legislation in this behalf, where it is found that a marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably. That was a case where parties had been living apart for the last twenty-two (22) years and a re-union was found to be impossible. We are conscious of the fact that this Court has also extended caution from time to time on this aspect, apart from noticing that it is only this Court which can do so, in exercise of its powers under Article 142 of the Constitution of India. If parties agree, they can always go back to the trial court for a motion by mutual consent, or this Court has exercised jurisdiction at times to put the matter at rest quickly. But that has not been the only circumstance in which a decree of divorce has been granted by this Court. In numerous cases, where a marriage is found to be a dead letter, the Court has exercised its extraordinary power under Article 142 of the Constitution of India to bring an end to it.

20. We do believe that not only is the continuity of this marriage fruitless, but it is causing further emotional trauma and disturbance to both the parties. This is even reflected in the manner of responses of the parties in the Court. The sooner this comes to an end, the better it would be, for both the parties. Our only hope is that with the end of these proceedings, which culminate in divorce between the parties, the two sides would see the senselessness of continuing other legal proceedings and make an endeavour to even bring those to an

end.

21. The provisions of Article 142 of the Constitution provide a unique power to the Supreme Court, to do "complete justice" between the parties, i.e., where at times law or statute may not provide a remedy, the Court can extend itself to put a quietus to a dispute in a manner which would befit the facts of the case. It is with this objective that we find it appropriate to take recourse to this provision in the present case.

22. We are of the view that an end to this marriage would permit the parties to go their own way in life after having spent two decades battling each other, and there can always be hope, even at this age, for a better life, if not together, separately.

23. We, thus, exercising our jurisdiction under Article 142 of the Constitution of India, grant a decree of divorce and dissolve the marriage inter se the parties forthwith.

24. The respondent is a qualified lawyer; she claims to have not gone back to her family in Canada, but stayed in India only to battle this litigation. The respondent is being paid Rs.7,500 per month by the appellant. With a law degree she would be able to meet her needs better, though she claims that her sole concentration has been on the inter se dispute. Be that as it may, we are of the view that the maintenance of Rs.7,500 per month should be continued to be paid by the appellant to the respondent, and it is open for the parties to move appropriate proceedings for either enhancement of this maintenance or reduction and cessation thereof. We only hope that this aspect can also be reconciled between the parties once a decree of divorce is granted.

25.The appeal is allowed leaving the parties to bear their own costs.

Judgment Referred.

[1]*(2019) 9 SCC 0409*