

RAJASTHAN HIGH COURT

Ram Lakhan

Vs.

Prem Kumari

S.B. Civil Misc. Appeal No. 49 of 1999

(H.R. Panwar, J.)

24.05.2002

JUDGMENT

H.R. Panwar, J.

1. This appeal under Section 28, Hindu Marriage Act, 1955 (in short, referred to hereinafter as 'the Act') is directed against the judgment and decree dated 14.12.1998 passed by the learned Addl District Judge No. 2, Bikaner whereby the petition filed by the appellant-husband under Section 13 of the Act seeking a decree of divorce was dismissed.

2. Briefly stated, facts to the extent they are relevant and necessary for the decision of this appeal are that : Marriage of appellant Ram Lakhan was held on 12.07.1970 with respondent Smt. Prem Kumarj according to Hindu rites and rituals. Three issues were born to them out of the wedlock who are now all major. In the application filed under Section 13 of the Act by the appellant on 15.10 1996 i.e., after almost 26 years of his marriage with the respondent, he alleged that the respondent is a very greedy lady; out of his own income, he built two houses - one in the Jai Narayan Vyas Colony and another at Rajmata-ki-Bari, out of which the house at Rajmata-ki-Bari is in the name of the respondent and she has put her lock there. In June 1994, he alleged, the respondent rallying with his son and daughters, turned him out from home after beating him because they were insisting upon him to transfer title of the house in the Jai Narayan Vyas Colony in the name of the respondent for which he was not willing. He alleged that the respondent has deserted him for more than two years. He alleged cruelty against himself at the hands of the respondent and initiated in the application that the respondent had instituted proceedings for maintenance against him claiming no source of livelihood on the allegation that he had contracted second marriage with

one Sumanlata. He, therefore, prayed in the application under Section 13 of the Act for a decree of divorce. The respondent in her reply to the application denied the allegations and stated that in 1992 the appellant has contracted second marriage with Sumanlata and with a view to defeating the legal consequences he is now seeking decree of divorce against her.

3. On the pleadings of the parties, the trial Court framed issues for determination on the points of alleged cruelty, desertion and whether the appellant is entitled to a decree of divorce.

4. Vide order dated 21.04.1999 passed in this appeal record of the trial Court was called. Record is received and tagged with the appeal. On 15.01.2002, when both the parties were present in the Court efforts were made for reconciliation, however, the parties merely indulged in leveling allegations against each other and did not evince a grain of submission to those rites and rituals which bound them in wedlock on 12th July, 1970. Under the circumstances with the consent of parties, this Court ordered to post the matter for final disposal at admission stage as ordered by this Court while issuing show cause notice to respondent on 21.04.1999.

5. I have heard learned counsel for the parties and perused the record. I have also carefully reappreciated the evidence of both the parties.

6. The application under Section 13 of the Act filed by the appellant was based on the ground of cruelty. The appellant alleged that in June 1994 rallying with their son and daughters the respondent had turned him out from marital home after beating him. He has himself alleged that his wife (respondent) had instituted proceedings against him under Section 125, Criminal Procedure Code levelling scathing allegations against him which also reflected her cruel treatment. In his vague and soliloquised statement, the appellant stated that his wife had been maltreating him since 1980, he went to U.P. in June 1994 on the death of his brother; when he returned to Bikaner he found his wife had already occupied the house in the Jai Narayan Vyas Colony after breaking open the lock; and, beat him at his return and turned him out from the marital home threatening him not to be sighted there again. He deposed that since 1994 he and his wife are living in separation. As against this, the wife (respondent herein) stated in her statement that her husband (the appellant) has been living with Sumanlata since 1992; 4 issues have been born to her husband by Sumanlata; when her husband desired to transfer the house at Majisa-ka-bas in favour of Sumanlata she made a complaint to

the Director and, therefore, infuriated at it her husband instituted divorce proceedings against her. In her cross-examination, she stated that she did not come to know when her husband married Sumanlata and she learnt about it only when children were born to them. Admittedly, Sumanlata was sister-in-law of the appellant being respondent's cousin sister.

7. Vide application under Order 8 Rule 8, Civil Procedure Code, the respondent filed certain documents on record which included guardianship-deed dated 18.08.92, a discharge ticket dated 29.01.93, Recurring deposit account No. 717 dated 11.03.93 in the name of appellant Ram Lakhan and Sumanlata and order dated 10.02.96 passed by the Addl. Civil Judge No. 2, Bikaner on proceedings under Section 125, Criminal Procedure Code A careful scrutiny of these documents unambiguously establishes beyond doubt that Sumanlata is the axe which has cut deep down the wedlock of appellant and respondent Smt. Prem Kurnari. What the appellant has charged in his application under Section 13 of the Act is a recoiling allegation and that is why the appellant has not been able to establish cruelty against him at the hands of the respondent-wife. Appellant husband has sought divorce on the charge of cruelty; he has alleged to have been beaten by wife and children; he has alleged forceful occupation of his one of the houses by wife and children and having been turned out from there and he has further alleged threats having been made to him; but, nowhere he has stated what legal remedy he sought in respect of these events. Ex.A4 goes a long way to make the story plain and simple. Such events do not happen normally without the consent of the wife in the house if it were to be a pious guardian-ship deed. Further, thereafter children were born to Sumanlata. Sumanlata was admittedly appellant's sister-in-law and the appellant can reasonably be expected to say whom Sumanlata married and whose children were born to Sumanlata after execution of the deed Ex.A4. The trial Court has, therefore, rightly held that the appellant has been living with Sumanlata and issues have been born to them. Thus, obviously it is the appellant who has deserted not only the wife but the entire family to live conveniently with another lady Sumanlata. on appreciation of the material on record and careful re-appreciation of the evidence, on record, I do not find any error in the finding arrived at by the trial Court.

8. Once the finding of the trial Court is affirmed on the main issue on which rests the fate of the proceedings initiated under Section 13 of the Act, it is needless to enter into detailed scrutiny of other aspects of the matter and decide other questions. It was not

at all necessary for the determination of the issues to prove a second marriage. May be, to cohabit and to cohabit in wedlock are different terms and even if non-applicant wife fails to prove a subsequent marriage of her husband during the subsistence of their marriage it would suffice to falsify the allegation of the husband of desertion by the wife if wife is able to place on record before the Court material showing relationship of the husband with another lady. In the instant case, though the respondent wife has not been able to prove subsequent marriage of her husband but enough material has been placed on record to convince a prudent mind to reach the conclusion that husband has carved matrimonial like relationship with another woman. There is sufficient material on record to judicially perceive that the appellant has occasioned events which have led to these proceedings. Section 13 of the Act does not envisage luxury. The provisions are meant to preserve the meaning of life. Personal laws may be different from laws of equity nonetheless they are based on equitable judicious perception for appreciation of facts and circumstances in their light. In these facts and circumstances, the husband's appeal seeking decree of divorce on the grounds of cruelty and desertion must fail.

9. For the reasons aforesaid, I find no merit in this appeal. The appeal fails and is hereby dismissed. The decree of the Court below is affirmed. There shall, however, be no order as to costs.

Appeal dismissed.