RAJASTHAN HIGH COURT

Harbans Singh

Vs.

Chandra Prabha

Civil Misc. Appeal No. 67 of 1991
(N.P. Gupta, J.)

03.01.2003

JUDGEMENT

N. P. Gupta, J.

1. This appeal has been filed by the unsuccessful husband, against the judgment and decree, of District Judge Banswara, dated 19-1-91 dismissing the appellant's petition for dissolution of marriage.

2. Facts of the case are that the parties belong to Hindu religion and were married according to Hindu rites on 7-2-1981. Out of the wedlock one son is born. The case of the husband is that on 21-8-83 the respondent went along with her father, under the pretext of celebrating Rakhi, with an assurance to return within a month, and since then has not returned to the matrimonial home. According to the appellant he wrote many letters, himself went to fetch her, sent his brother Bharat Singh, father Gulab Singh, and one Manohar Singh 2-3 times to fetch her, but all in vain. Thus according to the appellant the respondent has deserted the matrimonial home without any justifiable cause, and she is not discharging her conjugal obligations. It was also contended that, the wife submitted application for maintenance in the A*hmedabad Court*, wherein maintenance has been awarded, and in that application it was pleaded by the wife that she does want to go to matrimonial home. It was also pleaded that the appellant had obtained a decree for restitution of conjugal rights on 19-1-85, and in compliance of that decree also the wife has not returned to matrimonial home. Thus, the appellant claimed to have become entitled to a decree for dissolution of marriage.

3. The application was contested by the respondent on various grounds. It was contended that she had gone to her parent's house on the festival of Rakshabandhan with consent of the parties, as she was Willingly sent. In other words, she did not go

under any pretext. It was denied that the appellant wrote any letters asking her to return. The allegation about various persons including the appellant having gone to fetch her was also denied. The knowledge of the decree for restitution of conjugal rights was denied, and it was also pleaded that even if the husband has obtained any decree, he never made any effort to get the decree executed. The wife pleaded that she always was, and is ready and willing to return to the matrimonial home. According to the respondent, it was soon after the marriage that the appellant and his family members started misbehaving, inasmuch as the appellant used of hurt abuses after consuming alcohol, the respondent being pure vegetarian while the appellant and his family members non-vegetarians, and they were insisting upon the respondent to cook non-vegetarian food, which she does not know, and on that count the appellant got annoyed, and on one occasion he had thrown a burning stick on her. It was also alleged that she used to be taunted on the ground of dowry. It was also alleged that the respondent's father wrote number of letters to the appellant and his father requesting them to take her away but they were not responded. Likewise the respondent's father had also come to Banswara, with the purpose to rehabilitate the matrimonial home, and collected respectable persons from their community, but the appellant or his father did not turn up. Not only this, the respondent moved an application before their community Association at *Ahemdabad,* who also called the appellant, but he did not turn up. Regarding maintenance it was pleaded that despite decree having been passed by *Ahmedabad Court,* the appellant did not pay the amount willingly, unless it is put in execution. The respondent also contended that she has not deserted the matrimonial home, rather notwithstanding the cruel treatment being meted out to her, and despite all efforts being made on her part, the appellant is not inclined to keep her with him, and thus it cannot be said that she has deserted the matrimonial home. All other allegations were also denied.

4. The learned trial Court framed two material issues. During trial the appellant examined himself, and also produced Manohar Singh, Satish Chandra Mehta, and Gulab Singh, while in documentary evidence produced one receipt regarding payment of maintenance amount, and the judgment of the City Sessions Judge *Ahmedabad,* granting maintenance. On the other hand the respondent examined herself.

5. The learned trial Court after appreciating the evidence of the parties, decided both the issues against the appellant, and found that, the appellant has not proved that, the respondent had the knowledge of the decree for restitution of conjugal rights, or that the summons were duly served on her, that admittedly the appellant never put that

decree in execution. It was also found that, undisputedly the respondent was willingly sent to her parental house, the evidence led on behalf of the appellant to prove the efforts made to fetch her back to matrimonial home is ambiguous and incomplete. It was also found that the respondent clearly volunteered that, she always was and is ready and willing to live with the husband, while the appellant has stated in his statement that he does not want to keep her with him, and therefore it is not established that the respondent has deserted the matrimonial home, with intention to permanently bring to an end the matrimonial relations. On the other hand, the denial of the husband to keep the respondent with him clearly shows his otherwise intentions. In the conclusion, the learned trial Court dismissed the application moved by the appellant.

6. Assailing the impugned judgment, it is contended by the learned counsel for the appellant that, the learned trial Court has gone wrong in dismissing the appellant's application, inasmuch as, it was nowhere alleged by the respondent that she was not served with the summons of application for restitution of conjugal rights, or that she had no knowledge of that decree. On the other hand, the factum of passing of that decree was clearly brought to the knowledge of the respondent by taking a specific plea, in the reply filed in the proceedings under Section 125, Cr. P.C. still the wife is not complying with the decree for restitution of conjugal rights, for more than requisite period, and therefore, the decree for dissolution of marriage should have been passed. It was also contended that the wife has clearly deposed in her statement that, even if her husband or father in law wants to take her away, still she would not go. Thus, it is clear that she was never ready and willing to return to the matrimonial home, and since she has deserted the matrimonial home without any justifiable cause, the decree for dissolution of marriage should have been passed.

7. On the other hand, learned counsel for the respondent has supported the impugned judgment and decree.

8. I have considered the rival submissions, and have gone through the record.

9. Admittedly, the parties were married in December, 1981, and undisputedly the respondent was sent with her father on the occasion of Rakshabandhan of 1983, being 21-8-1993. The controversy is, as to whether the appellant or his father even went to fetch her, and she did not come, or that they never went, and the appellant is taking undue advantage of his own wrong.

10. On this precise question both parties have their own stories to tell, and as

transpires from the evidence led by the parties that, during trial the allegations after allegations have been added, and new stories have been introduced. Likewise both the parties have indulged in finding faults with the other one. It is in this process that on the appellant's side it has been improved that the respondent's father insisted on alienating the house Gulab Bhagwan in the name of the respondent, as a condition precedent to send her. Likewise it has also been developed that the respondent's father and the respondent were out and out to extort money, and the respondent wanted to live separately with the husband, which all has nowhere been pleaded. Similarly the wife has also improved upon the version, about her having not received notice of the proceedings for restitution of conjugal rights, though in the reply no such specific plea in this regard was taken.

11. It is significant to note that, if the matter were to rest on the bare word of mouth of the parties, then of course the appellant has also deposed that he does not want to keep the wife with him, and the respondent has also deposed, to always have been, and to be read and willing to rehabilitate the matrimonial home, and at the same time has also deposed in cross-examination, to be not ready to go, even if the husband or the father-in-law wants to take her away. But then this being matrimonial matter, the case is not required to be decided on such aspects, and a sincere attempt is required to be made to find out as to who is really at fault, i.e. whether the wife has deserted the matrimonial home, or the husband is taking advantage of the situation.

12. From the above stand point if the record is examined, what transpires is that, the respondent is consistent in her stand, to the effect that she is pure vegetarian, while the husband and her family members are non-vegetarian, and they had always been insisting upon her to cook non-vegetarian food, while the respondent did not know to cook non-vegetarian. It is in this background that admittedly the wife was willingly sent with her father on the occasion of Rakshabandhan on August 21, 1983. The question thereafter is about the appellant's side having gone to fetch her back to matrimonial home. In this regard the only pleading of the appellant is that the appellant wrote many letters, the appellant, his brother, father, and Manohar Singh went on 2-3- occasions to fetch her, but she did not come. The present petition has been filed on 15-4-86, while the petition for restitution of conjugal rights appears to have been filed on 14-12-1983, and the respondent had gone to her parent's house on 21-8-83. Admittedly it is not the case of the appellant that anybody had gone to fetch her after the appellant's filing the application for restitution of conjugal rights. Thus the total interregnum period is two months and three weeks, inasmuch as she had gone

with assurance to return after one month, and therefore, obviously there was no occasion for the appellant to make efforts to fetch her before expiry of one month. In this background, a look at the statement of P.W. 1, the appellant, shows that he alleges to have gone twice, his father and Manohar Singh is said to have gone twice/thrice, and his brother Bharat Singh is said to have gone twice. Thus, in all 6-7 attempts are said to have been made and many letters are also alleged to have sent. The letters according to the appellant are alleged to have been sent by ordinary post, and no copies are retained. However, he is categoric that the efforts were made to fetch her only after one month of Rakshabandhan. Then according to P.W. 2 Manohar Singh, he alleges to have gone twice at the directions of Gulab Singh, father of the appellant, and deposes that Gulab Singh had sent him, by telling that, the respondent had gone to *Ahmedabad* due to family dispute, and therefore, he should invoke his good offices to bring her back. He deposes that second time he had gone in Feb. 1985, and in cross-examination he deposes that first time he had gone in October, 1984. Then coming to the statement of P.W. 3 Satish Chandra Mehta, he has been produced to depose that the respondent wanted to live separately due to some dispute in the family, on the anvil of domestic work. Then the last witness is P.W. 4, Gulab Singh, the father of the appellant. He deposes that he had sent Manohar Singh and the appellant to *Ahmedabad,* to bring Chandra Prabha. He also sent Bharat Singh but she did not return. In the examination in chief, he does not depose to have himself gone to fetch her, Bharat Singh has not been produced, and he does not depose to have sent these persons twice thrice etc. He also admits that he did not write any letter to the father of the respondent to take her away on the occasion of Rakhi, but admits that she was willingly and peacefully sent. In the question put in the cross- examination, he has chosen to depose that after Rakshabandhan, customarily the respondent was required to be fetched, therefore he had gone, but father asked for insurance in the sum of 186 Rs. 50,000/-, and to gift the house Gulab Niwas, as a condition to send her. He further deposes that he had gone all alone with Bharat Singh. Thus this Gulab Singh also does not depose to have gone more than once, and as found above Bharat Singh has not been produced. It cannot be believed that, Manohar Singh would have been sent to fetch her after the appellant had mitiated the proceedings for restitution of conjugal rights, and/or after the decree for restitution of conjugal rights was passed. It is again a different story that, this is not even the appellant's case. In that view of the matter, since Manohar Singh deposes to have gone in October, 1984 and Feb. 1985 his version cannot at all be believed. Then I am left with the statement of father and son, P.W. 1 and P.W. 4. In absence of Bharat Singh being produced, the version of P.W. 4

cannot be believed on the face value, more particularly, in ï¿½? view of the vagueness, and uncertainty, as to when did they go, who went first, and about the contradictory version, put forward, regarding what transpired on their alleged visit to Ahmedabad. Similarly looking to the short span of time, being two months and three weeks, between expiry of one month from Rakshabandhan and initiating proceedings for restitution of conjugal rights, it is too much to believe, on the face value, that all these things may have happened, viz. frequent visits may have been made by the appellant, or his father, or other relations and number of letters may have been written to fetch her. On the other hand, what appears to be more probable is, that the wife admittedly was sent under cordial circumstances, and keeping in mind the minor abrasive events that occurred in the past, on the basis of non-vegetarian habits, both the parties may have been little indifferent, one waiting for the other to come, and to settle the relations, and in that process, the appellant hastened to move application under Section 9 of the Hindu Marriage Act on 14-12-83 itself. As appears from the judgment dated 19-12-85 that, there is not even an averment that before filing that application any registered notice was sent by the husband, it appears that the appellant simply initiated those proceedings, and straightway got the summons sent by registered post, for the hearing of 11-5-84, in the proceedings initiated on 14-12-83, and obtained the *ex parte* decree. It also appears it is in these circumstances that, wife also, in order to mount pressure initiated proceedings under Section 125, Cr. P.C., wherein order for maintenance happened to be passed, and this was passed on 9-9-85 by the Revisional Court, though the trial Court had rejected the application, and thus instead of abrasions being repaired the things went on being strain.

13. It is in this sequence that soon thereafter the present proceedings were initiated, and as appears from the proceedings of the learned trial Court that, on 6-8-86 the case was posted on 20-9-86 for reconciliation, on which date both the parties were not available, then on 11-11-86 again the present respondent could not appear, then on 20-12-86 it was recorded that the conciliation proceedings failed. It is not there as to which of the parties were more adamant in bringing about the failure of conciliation, as by then it had nowhere been the case of the respondent that she is not willing to rehabilitate the matrimonial home.

14. Thus, the net out come is that, it is not established that the wife had deserted the matrimonial home, with the requisite animus, rather she was willingly sent with her father, and thereafter no sincere attempts are proved to have been made on the side of the appellant to make her return to matrimonial home. It is to be grasped that when the

wife was sent willingly from matrimonial home, and as the admitted position is that after Rakshabandhan, she was required to be got, and requested to, return to the matrimonial home, and was not simply required to be compelled to return, to the house where the appellant lives. There is world of difference between matrimonial home, and the house where the husband lives, and one of the most significant distinction is, that the matrimonial home carries a proper love and affection and a congenial atmosphere, while the house where the husband lives can be a simply building constructed by stones and mortar with roof and doors. It clearly appears in the totality of circumstances that the provisions of Section 9 of the Hindu Marriage Act were invoked by the appellant only in an attempt to compel the respondent to come to the house where the husband lives, and not in a sincere attempt to bring her back to matrimonial home.

15. In that view of the matter since according to the wife respondent, she was being ill-treated on the ground of her not knowing to cook, or being ready and willing to cook non-vegetarian food, simply because she did not, on her own accord return to matrimonial home, after having been willingly sent with her father on the occasion of Rakhi, it cannot be said that she committed any matrimonial offence.

16. The only consequence flowing from the above is, that is clearly makes out that the appellant is taking undue advantage of his position, and acts within the meaning of Section 23 of the Hindu Marriage Act.

17. Consequently affirming the finding given by the learned trial Court, and for the aforesaid additional reasons. I do not feel inclined to interfere with the impugned judgment and decree.

18. The appeal thus requires to be dismissed, and is hereby dismissed. The parties are left to bear their own costs.

Appeal dismissed.