

## RAJASTHAN HIGH COURT

Vijay Kumar

Vs.

Neelam Rani

S.B. Civil Revision No. 12 of 2004

(B. Prasad, J.)

19.02.2004

### JUDGMENT

**B. Prasad, J.**

1. Heard.

2. Learned counsel for the petitioner submitted that he prayed for execution of the decree for restoration of conjugal rights. While praying for restoration of conjugal rights under law, no property which could be made the subject matter of attachment was shown in the execution application.

3. Learned Executing court has observed that in a decree under Section 9 of the Hindu Marriage Act, where the decree holder prays for restoration of conjugal rights, no force can be used to get the lady to the conjugal house. The only force which is conceived under the law is that the property of the opposite party can be attached. Here no property has been shown to be existing which can be made the subject matter of the attachment. That being the position, the execution application was dismissed.

4. In revision, learned counsel for the petitioner submitted that the Executing court should not have dismissed the execution and should have tried for reconciliation because it is provided under Section 23 of the Hindu Marriage Act. It is obligatory on the part of the courts to hold reconciliation proceedings at every stage. I am afraid the case law relied by the learned counsel for the petitioner as reported in *Sakki Alias Yashoda v. Chhanwarlal*<sup>1</sup> has no application in the facts of this case because it was not a proceeding under any Section of the Hindu Marriage Act. These were execution proceedings. The execution proceedings for a decree under Section 9 conceives of only one contingency that if the decree is not obeyed, then the property of the opposite

party can be attached. Petitioner has not shown any existing property, therefore, whatever the Executing court could do has not been asked for. What the Executing court was not supposed to do is asked for in this Court. There is no mention that any prayer was made before that Court for any reconciliation proceedings. I am only dealing with an order passed by the Executing Court. There is no illegality which could be rectified in revisional jurisdiction. That being the position, only request and argument raised by the learned counsel for the petitioner for reconciliation is beyond the scope of this revision petition. The request of the learned counsel for the petitioner is in the background that neither of the party has instituted divorce petition. Perhaps, they are not serious about it. May be, so that the question of not holding reconciliation in execution cannot be gone into. It was even not prayed for.

5. No interference is called for. The revision petition having no force is hereby dismissed.

Revision dismissed.

Cases Referred.

1. 1974 RLW 418