RAJASTHAN HIGH COURT

Ramesh Jangid @ Rameshwar Jangid

Vs.

Smt. Sunita

D.B. Civil Misc. Appeal No. 465 of 2001.
(Shiv Kumar Sharma and R.S. Chauhan, JJ.)

23.01.2007

JUDGMENT

R.S. Chauhan, J.

1. Saddled with a married life which no longer has any content, but only, has a form, the appellant challenges the judgment dated 9.2.01 passed by the Family Court, Ajmer whereby the learned Judge has dismissed the appellant's application for divorce under Section 13(1) of the Hindu Marriage Act, 1955 (henceforth to be referred to as "the Act", for short).

2. The brief facts of the case are that the appellant-husband was married to the respondent-wife on 1.11.1987 at Ajmer according to the Hindu rites and customs. Out of the wedlock a daughter Swati was born on 18.12.1989. According to the appellant, from the very beginning, the marriage had hit rough weather. The wife kept on pressurizing the appellant to leave his parents and to shift with her parents and to live there as a "Ghar Javai". However, as the appellant was only earning member of the family, he did not think it morally upright to abandon his aged parents and his younger brother. Since the appellant refused to succumb to the wife's pressure, she started insulting him by claiming that he was ill-educated and orthodox in his beliefs and thinking. She further started insulting the in-laws. He further alleged that on 24.3.93 the wife left the matrimonial home on the pretext that she is returning to her parental home only for few days. However, as she did not come back even after a lapse of 20 days, the appellant went to his in-laws' place to bring her back. But, to his utter surprise, the wife refused to come back to the matrimonial home. Even after his daughter was born, his in-laws did not permit him to meet the child or to meet his wife. Therefore, the appellant moved an application under Section 9 of the Act for

restitution of conjugal rights against the respondent-wife. It was only in the Court that the parties compromised and the respondent-wife was directed to accompany the appellant to Abu Road. Although the respondent-wife accompanied the husband to Abu Road, but there was no change in her behavior towards the appellant. When the appellant tried to re-establish a physical relationship with the wife, on one pretext or the other she denied him the physical union. Since the parties had compromised, the application under Section 9 of the Act was dismissed on 6.3.93. Thereafter, the parties stayed at Ajmer for two days. But during these two days, the appellant discovered, to his shock and dismay, that some strangers were visiting his wife. His wife would leave with the strangers. When he asked her about these strangers, she did not give him any satisfactory explanation. On 8.3.93, allegedly the appellant was assaulted by few anti-social elements who told him not to enquire about his wife's relationship with these strangers. On 9.3.93 the parties left to continue their stay at Abu Road. But even there, the wife continued her denial of physical relationship and continued her verbal abuse towards the appellant. In these circumstances, the appellant filed an application under Section 13 of the Act. However, on 28.1.95 the parties again compromised and the wife agreed to live with the husband in peace and tranquility. But despite her statement made before the Court, she continued to misbehave with the appellant and his family members. The appellant's father-in-law clearly told him that in case he wanted a divorce with his daughter all he had to do was to pay Rs. 50,000/- and the wife would be agreeable for a divorce. Meanwhile, it seems that the wife filed an application under Section 125 of the Criminal Procedure Code (henceforth to be referred to as 'the Code', for short). Vide order dated 12.12.95, the learned Court directed the husband to pay Rs. 300/- for the maintenance of the wife and Rs. 200/- for the maintenance of the daughter per month. Their relations deteriorated further when on 18.12.97 the appellant's in-laws, including a brother-in-law, came and assaulted the appellant. The appellant filed an F.I.R., for offence under Sections 147, 149, 323, 452 and 427 Indian Penal Code against in-laws. The trial is still continuing in the said case. The appellant has further alleged that the wife has deserted him since 24.3.93 without any reasonable jurisdiction. Thus, again he filed an application under Section 13 of the Act before the Family Court, Ajmer.

3. The wife submitted her written statement and denied all the averments made by the appellant. According to her, it is the appellant and his family members who have treated her cruelly, who have repeatedly demanded dowry from her and her family members and who have abandoned her. On the basis of the pleadings, the learned Family Court framed four issues. In order to support his case the appellant-examined

four witnesses besides himself. On the other hand, the respondent examined two more witnesses beside herself. After going through the oral and documentary evidence, the learned Court dismissed the application vide its judgment dated 9.2.01. Hence this appeal before this Court.

4. Mr. V.K. Mishra, learned counsel for the appellant has contended that a bare perusal of the testimony of the appellant clearly proves that he has been subjected to verbal abuse, to mental cruelty, denial of physical relationship and to physical assault. The narration of events is sufficient to establish cruelty by wife towards husband. Moreover, the parties have been living separately from 1993 till today. Therefore, the parties have been living separately for the last 14 years. Therefore, the irreparable brake-down of marriage is writ large. Hence, no fruitful purpose would be served by denying divorce to the appellant.

5. On the other hand, Mr. P.R.S. Rajawat, the learned counsel for the respondent has argued that every marriage has certain amount of friction. Therefore, the disagreements between the husband and wife cannot be blown up to conclude that the wife has been cruel towards husband or her in-laws. Moreover, it is the husband and his family members who have been demanding and have been treating the wife with cruelty.

6. We have heard both the learned counsels and have perused the impugned judgment.

7. Like any other relationship, marriage is based on love and affection, on caring and sensitivity, on physical and emotional comforts. It is a plant that needs to be nurtured, protected and promoted by both the parties. Too much of friction between the husband and the wife is likely to snap the relationship. Like any other relationship, the relationship of marriage is a delicate one. Therefore, the parties should endeavor to minimize tension and to maximize care, compassion and sensitivity.

8. A bare perusal of the appellant's testimony clearly reveals that from the very beginning the marriage was hitting a rough weather. The appellant, was the sole earning member of his family, and it was not possible for him to abandon his ageing parents and his younger brother. All of them were financially dependent upon him. The wife's demand that he should leave them and should move to a separate establishment, such a demand is most unreasonable. The other proposal put up by the wife and her family members that the appellant should permanently stay at the in-laws place is also an unreasonable proposal. Not only the appellant, but also the society expects a son to look after the aged parents and his other sibling. Hence, the appellant

was justified in turning down the proposal and the demand made by the wife. Merely, because her wishes were not fulfilled did not give the wife a cause to become verbally abusive and physically cruel. The persistent denial of physical relationship would certainly tantamount to an act of cruelty. Her public humiliation of the husband would only aggravate the situation. Hence, the appellant cannot be expected to live with the wife under such cruel treatment. Therefore, the impugned order is not sustainable as cruelty is writ large in the case.

9. The differences that have grown up between the parties, the distance which has widened between the parties for over a decade cannot be brushed aside lightly. It would be difficult, if not impossible, for the parties to forget the past and to begin the relationship of husband and wife afresh. For the last 14 years both the parties have remained separately. During this period they have developed their own thinking, their own life style and have learn to live in theft own isolated worlds. Thus, irreparable brake-down of marriage is obvious in the present case. In the case of *Naveen Kohli v. Neelu Kohli,* [1] the Hon'ble Supreme Court had clearly observed as under :

> "The court, no doubt, should seriously make an Endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.
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> Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. Preservation of such a marriage is totally unworkable which has creased to be effective and would be greater source of

misery for the parties not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life."

10. Similarly, in the *case of Durga Prasanna Tripathi v. Arundhati Tripathi,* [2] the Hon'ble Supreme Court had granted divorce on the ground of irreparable brake-down of marriage after the parties had lived separately for 14 years.

11. For the reasons mentioned above, we allow the appeal and set aside the impugned judgment dated 9.2.2001 passed by the learned Judge, Family Court, Ajmer.

While allowing the petition under Section 13 of the Hindu Marriage Act, we grant a decree of divorce in favor of the appellant-husband and dissolve the marriage solemnized between the parties on. 1.11.1987. There shall be no order as to cost.

Appeal allowed.

Cases Referred.

1. 2006(2) RCR(Civil) 290 : ((2006)4 SCC 558) : 2006(3) RLW 1892 (SC)
2. 2005(3) RCR(Civil) 819 : ((2005)7 SCC 355) : 2005(4) RLW 2258 (SC)