

## RAJASTHAN HIGH COURT

Smt. Santosh Devi

Vs.

Prem Chand Saini

Civil Misc. Appeal No. 1029 of 2002  
(Shiv Kumar Sharma and Dr. Vineet Kothari, JJ.)

12.02.2007

### JUDGMENT

**Shiv Kumar Sharma, J.**

1. This appeal is directed against the decree of divorce granted by Family Court No. 2, Jaipur along with application under Section 13(1) of the Hindu Marriage Act of the husband Prem Chand Saini against wife Smt.Santosh Devi vide judgment and decree dated 11.06.2002.
2. According to the application the parties got married as per Hindu Rites on 11.04.1992 at Mansinghpura, Tonk Road, Jaipur and out of the said wedlock in June, 1995 a male child was born. According to the applicant-husband after about six months of living together, the respondent-wife started pressurizing him to live separately from his parents who were not keeping well and used to go to her parents house even without informing him and her behavior towards the applicant-husband and his parents was cruel and she indulged in several fights with him and his parents and on 25.02.1995 she left the matrimonial home and never returned thereafter. Thus on account of cruelty and desertion, the divorce petition was filed on 12.07.1997 which was decreed by impugned judgment on 11.06.2002.
3. Being aggrieved by the said decree for divorce, the appellant-wife has preferred this appeal in this Court and cross objections have been filed by the respondent-husband against grant of permanent alimony in favor of wife @ Rs. 800/- per month and for the minor child @ Rs. 400/- per month.
4. We have heard learned counsel on both the sides and have perused the record.
5. The learned Family Court framed the following issues:-

(1) Whether the respondent-wife is guilty of cruel behavior with the applicant-husband after her marriage?

(2) Whether the respondent-wife has deserted the applicant-husband for more than two years before the date of filing of the divorce petition without any valid reason and has not performed matrimonial obligations?

6. In support of the petition, the applicant-husband examined before the Family Court himself as PW1, PW2 Lalchand, PW3 Phooli Devi and PW4 Pooran. As against this, the defendant-wife was examined as DW1, Rama Devi, the mother of the respondent-wife as DW2, Sitaram DW3, Lalchand and DW4 Ramji Lal Soni as DW5.

7. PW1 the applicant-husband deposed before the learned Family Court that the defendant-wife lived with him in their matrimonial home in a normal manner only for a period of six months and thereafter she started pressurizing the applicant-husband to live separately and she did not want to live with his parents and frequently indulged in abusive behavior with them. She leveled false allegations against all of them for demand of dowry etc. and as a matter of fact for a criminal case filed against the husband and his parents under Section 498-A of IPC, the husband had to remain in custody for about one week. The applicant-husband stated further that ultimately the father of the husband died on 28.09.1997 and even after birth of the child when the applicant-husband wanted to bring her back to their home, she refused to come and his in-laws indulged in abusive behavior with them. He also stated that the respondent-wife used to fight with him also and on one occasion she pulled his hair.

8. As against this, the defendant-wife denied these allegations and deposed before the Court that she never insisted upon the applicant-husband to live separately and on the contrary her in-laws insisted for dowry upon her and despite birth of the male child, she was not taken to her matrimonial home and because of the dowry demand she did not go to her matrimonial home after February, 1995. The other witnesses appearing on both the sides have more or less supported the version given by the husband and the wife.

9. Having perused the evidence and the statements on record and in view of the totality of the facts and circumstances of the case, this Court is of the opinion that there is no force in the appeal filed by the respondent-wife and the applicant-husband has succeeded in proving the case of cruelty and desertion against the respondent-wife. Undue insistence on the husband to live separately from the old aged parents, particularly when one of the parents is ill and countering the filing of divorce petition by a case under Section 498-A of IPC, during which the applicant-husband had to

remain in custody and then leaving the matrimonial home ever since February, 1995. These facts which have been proved by the various witnesses before the Court are sufficient indication, in the opinion of this Court, of acts of cruelty by wife towards the husband. Leaving matrimonial home without informing the parents and the applicant-husband and not coming to matrimonial home ever since February, 1995 shows that the respondent-wife was not at all interested in living with the applicant-husband as wife and had deserted the husband, therefore, the learned Family Court has rightly granted the decree of divorce on the ground of cruelty and desertion.

10. In view of this, we uphold the decree of divorce granted in favor of the applicant-husband and dismiss the appeal of the wife. At the same time, the cross objections filed by the husband against the award of alimony of Rs. 800/- per month in favor of the wife and Rs. 400/- per month in favor of the minor child are also found to be devoid of any merit and accordingly the cross objections are also dismissed. There shall be no order as to costs.

Appeal dismissed.