

# RAJASTHAN HIGH COURT

Sandeep Kumar

Vs.

Smt. Sonila Kumar

D.B. Civil Misc. Appeal No. 1473 of 2004  
(Rajesh Balia and Sangeet Lodha, JJ.)

21.08.2007

## JUDGMENT

**Rajesh Balia, J.**

1. This appeal is directed against the order of Family Court, Udaipur dated 03.03.2004, rejecting the application under Section 13 of the Hindu Marriage Act for dissolution of marriage filed by the appellant.

Marriage of the appellant husband and respondent was solemnized on 28.01.1993 at Udaipur. According to averments made in the application dated 03.10.2000 he has claimed dissolution of his marriage on the ground that the respondent wife has treated the petitioner and has conducted herself with cruelty towards the appellant and has deserted him by leaving the matrimonial home on 12.04.1996 and since then she has not returned to matrimonial home without any just and reasonable cause.

2. The facts which have been proved are that soon after marriage the wife has desired that the appellant should remain away from his parents and stay at Jaipur, with the mother of the respondent wife for which appellant was not agreeable. Since the appellant has declined to leave his parents as he was only son. She started creating problem in the house and often used to leave matrimonial home for going to Jaipur and would return only after forcing the petitioner to accept the unreasonable demands.

3. The final straw came on 12.04.1996 when the respondent went with his brother Girish Bajaj to Jaipur and did not return. The appellant has gone to Jaipur on 17.06.1996 to bring his wife but found that she has gone to Delhi. He went to Delhi but the wife refused to return with him. The appellant has entreated her by letters dated 27.05.1996 and 04.06.1996 and also through telegram dated 03.06.1996, to

return to the matrimonial home, but she did not return. He also filed an application under Section 10 of the Hindu Marriage Act, 1955, but the attitude of wife remained negative and she has harassed the petitioner by filing false reply to the application which also amounted to cruelty.

4. Thus, for the aforesaid reasons the petitioner has claimed dissolution of marriage as noticed above.

5. The wife in the reply has declined and has countered that it was her husband who has called his brother from Delhi to send her with his brother and thereafter, he declined to call her back to his matrimonial home. She declined that her husband had any time since 12.04.1996 desired her to return to her matrimonial home. According to her the appellant has failed to prove his case both on the count of cruelty or for the separation for the period of more than two years at the time of filing of the petition. The application had been rejected vide judgment dated 03.03.04.

6. On the pleadings of the parties three issues were framed firstly whether wife had treated the appellant with cruelty secondly whether the respondent wife has deserted her husband for more than two years before the date of filing of the application without any reasonable cause and lastly the relief.

7. So far as the first question is concerned that the wife has treated the husband with cruelty, the Family Court has found that the applicant has failed to prove any conduct of cruelty by wife towards him, and in our opinion, rightly so. Neither in the pleadings nor in the evidence, any material has come on record which could be considered as a cruelty on the part of wife whether by harassing the petitioner mentally or physically. Obviously, no allegation of physical manhandling has been attributed to wife. The only conduct of cruelty that has been alleged against the wife is the desire to live separate from her parents-in-law at Jaipur to look after her widowed mother. The appellant in his previous application captioned under Section 10 of the Hindu Marriage Act, had claimed for the dissolution of marriage. In this regard he has clearly stated that wife has desired that her husband take a transfer to Jaipur where her widowed mother is living alone, so that they can live together. A general expression of desire by the wife about arranging their affairs in a manner that like her husband she too could take care of her aged parents particularly widowed mother in evening of her life cannot be said to be an unreasonable demand as to infer any mental or physical cruelty towards husband. These are the normal problems faced by all families more so, where the family is nuclear. Merely, by expression of desire of taking care of

husband's parents or the wife's parents by the parties to the marriage by itself cannot amount to be a demand unreasonably made on each other so as to result in mental harassment. Beyond expression of such desire no other overt act has been attributed to wife so as to prove inference of cruelty. The fact that the wife has in the aforesaid circumstance frequently visiting her mother also cannot be considered as an act of cruelty when it is not coupled with any other allegation about withdrawal of the wife from discharging of her matrimonial obligations or causing harassment in any manner in order to enforce such desire in an unreasonable manner.

8. Moreover, it is high-time now that parties to marriage realize in the matter of taking care of the parents, undue preference cannot be attached to husband's parents only to neglect the daughter's desire to serve her parents also. It is only the matter of degree and availability of opportunities how the obligation towards parents both can be discharged by the parties to marriage. It cannot be denied that if a son has an obligation to look after his parents in old age, it is also equally important in respect of wife's desire to look after her parents in their old age particularly when they are living all alone. A community which boasts of equality between men and women without gender bias can ill afford to give preference in the matter of looking after the aged parents of husband and wife to an extent to consider a request or desire of the wife to look after her parents also to be an act of cruelty.

9. Similarly, few visits by the wife to her parents even if it be without informing husband without anything more by itself cannot be considered to be a breach of matrimonial obligation, so as to amount in itself an act of cruelty. It is to be realized that the wife is not a chattel or personal possession of husband that she must depend on her husband's consent to meet her parents. Freedom of a woman is also equally to be respected and protected in the matter of movement within the society and keeping relations with her parents.

10. Apart from simple frequent visits to her parents nothing has been shown that how such frequent visits have otherwise affected the matrimonial relations between the husband and wife of any prospects of their future relationship. It shows poor mutual understanding and male dominance, intolerance without making normal adjustments which are ordinarily expected of an ordinary couple.

11. We are in agreement with the finding of the Family Court that the case of cruel treatment by wife is not made out.

12. So far as, the second issue about the desertion by wife without reasonable cause is

concerned the basic facts are not in dispute that wife has left matrimonial home on 12.04.1996 and she has not returned to matrimonial home. Since then, it is also not in dispute that she has accompanied her brother Girish Bajaj, at the time of leaving matrimonial home on 12.04.1996. The issue between parties whether Girish Bajaj was summoned by wife or by husband for the purpose of accompanying the respondent to Jaipur is also of little significance because in either case the inference is irresistible that when respondent has left her matrimonial home it was not with any *animus* either on the part of the respondent to remove her from matrimonial home nor on the part of wife not to return.

13. We are left only with the subsequent conduct of the parties to draw an inference whether the wife has remained away from matrimonial home without any reasonable cause so as to amount desertion in legal sense.

14. The appellant has tried to explain that he has written letters dated 27.05.1996, 04.06.1996 apart from sending a telegram dated 03.06.1996 requesting his wife to return to her matrimonial home. He has also tried to do that when he visited Jaipur to meet his wife on 17.06.1996, after the aforesaid two letters, respondent has not given response and not finding her at Jaipur, he visited her at Delhi where she was staying with her sister but she declined to return with him at that time. Though, the fact of any such efforts by husband to seek for return to matrimonial home has been denied by the wife, the fact remains that there is positive evidence on record that she has never tried after leaving matrimonial home on 12.06.1996 to return to Udaipur where the matrimonial home was situated or that she was denied access to her matrimonial home.

15. On the other hand nothing has been brought on record that she has ever denied or tried to return to Udaipur to join her husband. It is true that after about ten months of her leaving Udaipur an application captioned under Section 10 was filed in Udaipur Family Court on 11.02.1997 on the ground of desertion seeking a relief of judicial divorce.

16. However, the facts remain that she has not returned home in spite of requests made by her husband for no justifiable cause. From the pleading of the parties and the evidence it appears that only reason for wife not to return to her matrimonial home has been that husband has not come to take her to matrimonial home. Apparently, merely because husband has not made effort to go and take the wife at home personally after she has voluntarily with consent, went to her parent's house cannot be a ground for a

wife not to return to her matrimonial home indefinitely. The fact that wife has not made any positive attempt for all these years for return to matrimonial home except insisting that appellant has not come to take her to matrimonial home cannot be taken to be reasonable ground for wife to keep away from her matrimonial home and withdrawal from her matrimonial obligations. If wife tries to act Cindrella at all times, the fairy tales to await prince Charm of her dreams to come riding on horse and take her, even after her marriage, she could think herself it cannot be expected in real life to be a reasonable ground not to return to her matrimonial home to resume matrimonial obligations.

17. It is well settled that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case which come on record and those facts have to be viewed as to the purpose which is revealed by those facts or by conduct and expression of intention, both interior and subsequent to the actual act of separation. Reference may be made to decision in case of *Sanat Kumar Agarwal v. Smt. Nandini Agarwal*,<sup>1</sup> in this connection.

18. The primacy of circumstance that husband has not made steps to bring her wife back to matrimonial home has been taken too far by the Family Court. Obligation of habituating matrimonial home rest not only with the husband but rest both on husband and wife. When it has not been proved that husband was instrumental in wife leaving the matrimonial home, and the evidence is clear that the wife has left the matrimonial home with the consent of her husband, and it is not the case of the either of the parties that on 12.04.1996 there was any intention on the either of the side to put a break on the continuance of the matrimonial obligation, irrespective of the fact who called Girish Bajaj to accompany her to Jaipur. It was equally obligatory for the wife to have returned within a reasonable time to the matrimonial home. There is nothing exceptional in the circumstances to suggest which could have prevented wife from making such Endeavour for all these years.

19. It is significant that the earlier petition was withdrawn in view of the fact that wife has made categorical statement that she is still willing to go to matrimonial home. But still no attempt was made by her to return to her matrimonial home. There was no obstruction on the part of husband to resist her to return. In these circumstances, we are of the opinion that for this reason alone the learned Judge Family Court was not justified in drawing inference against the husband. Thus the case is clearly made out that the wife has deserted matrimonial home without reasonable cause and she has remained away from her matrimonial home for more than two years at the time of

filing of the petition.

20. Moreover, the ground reality is that both the parties are living separate for more than eleven years. Now, all the efforts of reconciliation between the parties have failed and the marriage has broken irretrievably. It would, therefore, not be in the interest of either of the parties to carry on the burden of this status.

21. Accordingly, the appeal is allowed. Judgment under appeal is set aside. The application of the appellant under Section 13 for dissolution of marriage with respondent is allowed and the marriage of appellant and Smt. Sonila Kumar is dissolved by the decree of divorce.

There shall be no order as to costs.

Appeal allowed.

Cases Referred.

1. AIR 1990 SC 594