

Court No. - 2

Case :-FIRST APPEAL No. - 32 of 2023

Appellant :-Jitendra Kumar Srivastava

Respondent :- Smt. Sweta Srivastava

Counsel for Appellant :- Rajesh Kumar Pandey

Hon'ble Rajan Roy J.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Rajesh Kumar Pandey, the learned counsel for the appellant and perused the material placed on record.
2. By means of the instant appeal filed under Section 19 of the Family Courts Act, the appellant has challenged the validity of a judgment and decree dated 19.01.2023, passed by the VI Additional Principal Judge, Family Court, Lucknow, in Suit No.1198 of 2018: Jitendra Kumar Srivastava versus Smt. Sweta Srivastava, under Section 13 of Hindu Marriage Act, 1955.
3. The appeal was admitted by means of an order dated 16.02.2023, notice was issued to the respondent and the trial court record was summoned. The office has reported that the respondent declined to receive notice and, therefore, it was affixed on the gate of her house in presence of a witness. The service of notice on the respondent is sufficient but she has not put in appearance before this court to oppose the appeal and, therefore, the appeal is being decided ex-parte.
4. In the plaint filed on 07.05.2018 before the Family Court the plaintiff-appellant pleaded that the parties got married on 23.11.2016 at Lucknow. It was the first marriage of the defendant-respondent and the second marriage of the appellant. The relations between the parties remained normal merely for a period of 4-5 months and thereafter the respondent started harassing the appellant by various means. She used to abuse the appellant and to threaten to leave him. She used to start a quarrel whenever some friends or relatives visited the plaintiff and she

used to insult the plaintiff and damage the household goods in their presence. She forced the plaintiff to live in a separate room and threatened that in case the plaintiff entered her room, she would commit suicide and entangle his entire family in a criminal case. The respondent works as a receptionist in a private hospital at Lucknow. The plaintiff had filed his affidavit in support of the plaint.

5. The Family Court issued summons of the suit to the defendant. The defendant appeared before the Family Court on 05.04.2019 and the matter was referred to the Mediation and Conciliation Centre. Thereafter the suit was transferred to the Court of Additional Principal Judge, Family Court No.6, Lucknow and on 25.01.2021 the Family Court issued fresh summons to the defendant through registered post as well as courier. On 22.09.2021 the Family Court passed an order holding service of summon of the suit on the defendant to be sufficient but as the defendant did not appear before the Family Court, on 15.11.2021 the suit was ordered to proceed ex-parte.
6. The plaintiff examined himself as PW-1 by filing his affidavit as his examination-in-chief, wherein he reiterated the plaint averments and he further stated that the defendant had appeared before the Family Court on 05.04.2019 and the matter was referred for mediation. During mediation proceedings the defendant declined to enter into any settlement and she also declined to live with the plaintiff. The plaintiff's father Dakshini Prasad Srivastava was examined PW-2 and in his affidavit filed as his examination-in-chief, he stated that the defendant used to harass the plaintiff by insulting him in presence of friends and relatives and she compelled the plaintiff to live in a separate room by threatening him that in case he entered her room, she would commit suicide and will entangle his entire family in a criminal case.
7. Written submissions were filed on behalf of the plaintiff before the Family Court *inter alia* stating that the defendant has deserted the plaintiff since April, 2017 i.e., merely five months after the parties got married and she is not performing her matrimonial obligations since

then. A period of five years had elapsed since the defendant stopped performing her matrimonial obligations towards the plaintiff and that she continuously behaved in a cruel manner.

8. The Family Court has framed following issues in the suit:
 - a. Whether the defendant is plaintiff's wife?
 - b. Whether the defendant has treated the plaintiff in a cruel manner?
And
 - c. To what relief the plaintiff is entitled?
9. During the course of hearing of the suit, the Family Court had directed the plaintiff to file the documents relating to the litigation between him and his first wife. The plaintiff filed a copy of an order dated 10.03.2011 passed by this Court in Application Under Section 482 No.1210 of 2010, wherein this court has recorded as follows: -

“In terms of report submitted by the Mediation and Conciliation Centre of this court, it is evident that the parties have settled the dispute as they have decided to be separate from each other and also not to press any criminal proceedings against each other.

In the light of the aforesaid report, I hereby quash the charge sheet No.260 of 2009, filed in case No. 2212 of 2010, arising out of crime No.582 of 2009, under Sections 323, 498-A IPC and 3/4 D.P.Act, Police Station, Mahanagar, district Lucknow, pending before the Additional Chief Judicial Magistrate, IV, Lucknow.

The petition is disposed of finally.”

10. A Copy of the settlement agreement dated 26.03.2010 entered into between the plaintiff and his first wife in the Mediation and Conciliation Centre of this Court was also brought on record wherein it was recorded that the parties had filed a suit for divorce by mutual consent under Section 13-B of Hindu Marriage Act and the proceedings of criminal case instituted by the plaintiff's first wife have been quashed on the basis of agreement between the parties. A copy of the judgment and order dated 20.09.2010, passed by the Principal Judge, Family Court, Lucknow in Regular Suit No.515 of 2010 was also filed by the plaintiff whereby the plaintiff's first

marriage was dissolved by mutual consent between him and his first wife.

11. The Family Court decided the first issue in favour of the plaintiff by holding that the defendant is plaintiff's wife. While deciding issue no.2 the Family Court held that the defendant has not appeared in spite of service of summons and the suit was proceeding ex-parte against her and, therefore, the responsibility of the court had increased and it had to examine the entire pleadings and evidence minutely. The Family Court held that from the documents filed by the plaintiff it appears that a dispute had occurred between the plaintiff and his first wife also, which had culminated in their divorce. The Family Court further held that although the plaintiff has stated that the defendant used to say that she wanted a divorce it is the plaintiff himself who had filed a suit for divorce. The plaintiff has not stated as to whether the defendant has gone away from her home. PW-2 is the plaintiff's father and he will naturally support the plaintiff's case. The plaintiff has not given the detailed particulars of the threats extended by the defendant and such incidents can occur whenever there are quarrels between a husband and wife. The plaintiff has not adduced any evidence to establish that such incidents were occurring continuously.
12. In view of the aforesaid facts and circumstances of the case, the following points arise for determination in this appeal: -
 - a) Whether there was sufficient evidence to prove the ground of cruelty pleaded by the plaintiff-appellant for grant of a decree of divorce?
 - b) Whether the judgment and decree of dismissal of suit passed by the Family Court is sustainable in law?
13. In **Parveen Mehta v. Inderjit Mehta**: (2002) 5 SCC 706, the Hon'ble Supreme Court has explained the term Cruelty as used in Section 13 of the Hindu Marriage Act, in the following words: -

“21. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not

safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

14. The plaintiff has pleaded that relations between the parties remained normal merely for a period of 4-5 months and thereafter the defendant started harassing him by various means, she used to abuse him and to threaten to leave him, she used to start a quarrel whenever some friends or relatives visited the plaintiff and she used to insult him and to damage the household goods in their presence. She forced the plaintiff to live in a separate room and threatened that in case the plaintiff entered her room, she would commit suicide and entangle his entire family in a criminal case. Although the defendant had put in appearance before the Family Court on 05.04.2019, she did not file a written statement to controvert these pleadings and, therefore, she impliedly admitted the plaintiff's pleadings. It is a well established principle of law that admission is the best evidence and the admitted facts need no proof.
15. The plaintiff examined himself as PW-1 by filing his affidavit as his examination-in-chief, wherein he reiterated the plaint averments and he further stated that during mediation proceedings the defendant declined to enter into any settlement and she also declined to live with the plaintiff. The plaintiff's father Dakshini Prasad Srivastava was

examined PW-2 and in his affidavit filed as his examination-in-chief, he stated that the defendant used to harass the plaintiff by insulting him in presence of friends and relatives and she compelled the plaintiff to live in a separate room by threatening him that in case he entered her room, she would commit suicide and will entangle his entire family in a criminal case. As the suit was proceeding ex-parte, there was no occasion for any of the witnesses being cross examined and any discrepancy having come to light in their statements given in examination-in-chief and cross-examination.

16. It was submitted in the written submissions filed on behalf of the plaintiff before the Family Court that the defendant has deserted the plaintiff since April, 2017 i.e., merely five months after the parties got married and she is not performing her matrimonial obligations since then. A period of five years had elapsed since the defendant stopped performing her matrimonial obligations towards the plaintiff and that she continuously behaved in a cruel manner.
17. The Family Court has wrongly discarded the evidence of PW-2 because he is the plaintiff's father and he would obviously support the plaintiff's case. In matrimonial disputes, the events in question take place between the parties within the four walls of their house, and the family members are the most natural witnesses of those events. The testimony of family members cannot be discarded on the assumption that they will only support the plaintiff's case. The Family Court lost sight of the fact that the entire evidence of the plaintiff – appellant has remained unrebutted. The civil suits are required to be decided on the basis of preponderance of probabilities and the standard of proof beyond reasonable doubt, which is applicable in criminal cases, does not apply to civil suits.
18. The Family Court has wrongly been influenced by the fact that a dispute had occurred between the plaintiff and his first wife also, which had culminated in their divorce. When the earlier marriage was dissolved by a decree of divorce by mutual consent and the defendant also did not level any allegations against the plaintiff, the Family

Court was not justified in making assumptions against the plaintiff on the ground that his earlier marriage had failed.

19. One of the reasons mentioned by the Family Court for dismissing the suit is that the plaintiff has not stated as to whether the defendant has gone away from her home. When the plaintiff has categorically stated that the defendant did not allow him to enter her room and she declined cohabitation with the plaintiff and did not perform her matrimonial obligations, it was apparent that the defendant had abandoned the matrimonial relationship between herself and the plaintiff and the fact of the defendant residing in the plaintiff's house or away from it is not of any significance.
20. Cohabitation is an essential part of a matrimonial relationship and if the wife declines to cohabit with the husband by forcing him to live in a separate room, she deprives him of his conjugal rights, which will have an adverse impact on his mental and physical well being and which will amount to both physical and mental cruelty. The plaintiff's allegation of being wrongfully deprived of his conjugal rights has not been controverted by the defendant-respondent and the same has been admitted by implication.
21. In view of the aforesaid facts, we are of the considered view that there was sufficient evidence to prove the grounds of cruelty pleaded by the plaintiff-appellant for grant of a decree of divorce the plaintiff has successfully proved by his ex-parte evidence that the defendant was treating him with cruelty.
22. Although the ground of the plaintiff's desertion by the defendant is also established from the material available on record, since the Family Court did not frame any issue on this point, and the ground of cruelty alone is sufficient for allowing the appeal, there is no need go into this question in this appeal.
23. In view of the aforesaid discussion, we answer the points involved in this appeal as follows: -

- a) There was sufficient evidence to prove the ground of cruelty pleaded by the plaintiff-appellant for grant of a decree of divorce.
 - b) The judgment and decree of dismissal of suit passed by the Family Court is unsustainable in law.
24. Accordingly, the appeal is allowed. The ex parte judgment and decree dated 19.01.2023, passed by the VI Additional Principal Judge, Family Court, Lucknow, dismissing Suit No.1198 of 2018: Jitendra Kumar Srivastava versus Smt. Sweta Srivastava, under Section 13 of Hindu Marriage Act, 1955 is set aside and the suit is decreed. A decree of divorce is granted in favour of the plaintiff dissolving his marriage with the defendant-respondent, which was solemnized on 23.11.2016.
25. Costs of the litigation made easy.
26. Let a copy of this judgment be sent to the Presiding Officer who had passed the judgment under challenge for his information.

(Subhash Vidyarthi J.) (Rajan Roy J.)

Order Date: 22.08.2024

Ram.