

Court No. - 39

Case :- FIRST APPEAL No. - 37 of 2009

Appellant :- Smt. Poonam

Respondent :- Vinay Kumar Singh @ Pankaj

Counsel for Appellant :- A.N. Bhargava,Ajay Senger,Chaudhary Subhash Kumar,Suboeh Kumar

Counsel for Respondent :- Salman Ahmad,Sanjay Kumar Singh,Sunita Chauhan

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. Heard learned counsel for the appellant and perused the record.
2. Present appeal has been filed under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act'), arising from the judgement and order dated 18.12.2008 passed by learned District Judge, Jalun at Orai, in Marriage Petition No. 96 of 2007 (Vinay Kumar Singh v. Smt. Poonam), whereby the learned trial court had dissolved the marriage between the parties under Section 13(1A)(i) of the Act.
3. The undisputed facts of the case are, the marriage between the appellant and the respondent was solemnised on 08.12.2001. According to the respondent, the appellant deserted the company of the respondent on 18.06.2002. Since the appellant did not revive her matrimonial relationship with the respondent, he first instituted proceeding under Section 9 of the Act in Case No. 27 of 2004 seeking restitution of his conjugal rights. That proceeding was resisted by the respondent. She filed a Written Statement and raised counter claim. Through that she claimed relief of decree of judicial separation. It is a fact, on 11.05.2006, the proceeding in Case No. 27 of 2004 instituted by the respondent, under Section 9

of the Act, was dismissed. At the same time, the decree of judicial separation prayed for by the appellant under section 10 of the Act, was granted in favour of the appellant.

4. More than a year thereafter, the proceeding instituted by the respondent was based on the plea that the parties never cohabited since the decree of judicial separation. It is a fact, the appellant disputed that claim. However, upon perusal of the evidence led by the parties, the learned trial court has reached a conclusion that there is no occasion to doubt the testimony of the respondent/husband that the parties did not cohabit and thus their marriage was not revived within a year from the decree of judicial separation granted in favour of the appellant, on 11.05.2006. In fact no evidence arose at the instance of the appellant to establish that the marriage stood revived at any point of time after 11.05.2006 and up to institution of the divorce case proceeding or during pendency of that proceeding.

5. Unlike other grounds for divorce available under section 11 of the Act, the additional ground for divorce available under Section 13(1A) of the Act are confined to the conduct of the parties to ascertain whether their relationship was reestablished i.e. whether they cohabited. The quality of the relationship that may revive is not a fact to be examined for the purpose of success on that ground available, under Section 13(1A) of the Act.

6. Here, the limited issue remains whether any relationship arose between the husband and the wife within the statutory period contemplated either from the decree of restitution of conjugal rights or the decree of judicial separation granted by a Court. If no cohabitation arises within the statutory period specified there for, it becomes open to the affected party to apply for dissolution of

marriage for reason of no cohabitation arising within the prescribed statutory period. Here, during that period, no cohabitation is seen to have arisen as may create any doubt with the Court.

7. Accordingly, the decree granted by the learned trial court for reason of matrimonial relationship having not revived within the statutory period of one year from the date of decree of judicial separation granted is justified. The present appeal lacks merit and is accordingly **dismissed**.

Order Date :- 9.9.2024

SA

(Donadi Ramesh, J.) (S.D. Singh, J.)