Court No. - 2

Case :- FIRST APPEAL No. - 141 of 2022

Appellant :- Saurabh Sachan
Respondent :- Garima Sachan
Counsel for Appellant :- Vishwas Shukla,Ram Kumar Singh

Hon'ble Rajan Roy J.
Hon'ble Subhash Vidyarthi J.

1. Heard Sri R.K. Singh Advocate, the learned counsel for the applicant.

2. By means of the instant appeal filed under Section 19 (1) of the Family Courts Act, 1984, the appellant has challenged the validity of the judgment and decree dated 29.11.2022 passed by the Additional Principal Judge-05, Family Court, Lucknow in Civil Suit No. 2430 of 2017, which was a suit filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 for a decree of divorce against the respondent.

3. On 23.12.2022, this Court had issued notice to the respondent. On 05.04.2024, the office reported that service of notice on the sole respondent is sufficient but the respondent has not put in appearance. Therefore, the appeal is being heard ex parte.

4. Briefly stated, the facts pleaded by the appellant in the plaint filed before the Family Court are that the plaintiff got married to the defendant on 12.11.2006 at Arya Samaj Mandir, Aliganj, Lucknow. The plaintiff belongs to Kurmi caste, which falls within 'other backward castes' category whereas the defendant belongs to Brahmin caste, which is considered to be an upper caste. For this reason, the defendant's family members were not willing for her marriage with the plaintiff and they had not participated in the marriage ceremony. The marriage between the parties was registered before the Registrar of Hindu Marriages, Lucknow, on 13.11.2006. A son was born out of

the wedlock between the parties on 02.11.2009 at a hospital at Gurgaon, who was named Master Vedansh Sachan.

5. The plaintiff pleaded that the defendant treated herself to be woman belonging to a high caste and she used to humiliate the plaintiff on several occasions even in presence of friends and relatives. She abused the plaintiff in presence of his friends and relatives at the first birthday function of master Vedansh on 02.11.2010. The defendant started residing separate from the plaintiff since June, 2011 and initially she set up a boutique in the name and style 'Vedansh Creations' at Gurgaon and thereafter she has set up another shop titled 'Maayra Design Studio'. The defendant is residing with her parents and she is keeping master Vedansh with her. The plaintiff had filed Writ Petition No. 234 of 2015 for issuance of a writ of habeas corpus for claiming custody and visitation rights in respect of his son wherein the defendant appeared before this Court on 18.09.2015 and she stated that she would not live with the plaintiff as his wife.

6. The plaintiff pleaded that the aforesaid acts of the defendant constitute cruelty against him.

7. The defendant did not appear before the Family Court also and on 26.11.2019, the Family Court had ordered the suit to proceed ex parte. The plaintiff filed his affidavit as his evidence in support of his case wherein he reiterated the plaint averments.

8. The Family Court has framed the following issues in the suit:-

(i) Whether the defendant is the plaintiff's wife?

(ii) Whether the defendant has treated the plaintiff in a cruel manner?

(iii) Whether the defendant has deserted the plaintiff for a period of two years prior to filing of the suit?

(iv) To what relief the plaintiff is entitled?

9. The Family Court decided the issue no. 1 in favour of the plaintiff, as the marriage has been duly registered before the Registrar, Hindu Marriages, Lucknow.

10. On issue no. 2, the Family Court held that although the plaintiff alleged that the defendant used to repetitively humiliated him because of his belonging to a backward caste and that she insulted him in presence of his friends and relatives, the plaintiff did not get any friend or relative examined and the defendant had married him in spite of his caste. The plaintiff has not made any pleading or adduced any evidence to establish whether he had made any efforts for keeping the defendant with him as his wife.

11. The Family Court referred to a decision of the Hon'ble Supreme Court in the case of **V. Bhagat v. D. Bhagat (Mrs)** : (1994) 1 SCC 337, wherein the Hon'ble Supreme Court has held that:-

> *"Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be Determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."*

12. After referring to the aforesaid judgment, the Family Court held that the conduct of the defendant cannot be said to be such as would make it impossible for the plaintiff to live with the defendant.

13. On issue no. 3, the Family Court held that on the one hand, the plaintiff has pleaded that there is no relationship of husband and wife between the parties since 2011 whereas on the other hand, he has pleaded that he had filed a petition for issuance of a writ of habeas corpus for claiming custody or visitation rights in respect of his son master Vedansh, in which the defendant appeared on 18.09.2015 and she declined to live with the plaintiff as his wife. As per the Family Court, the aforesaid two statements are self contradictory as in one, the plaintiff claims that there is no matrimonial relations between the parties since 2011 whereas in the other it is stated that the defendant declined to live with the plaintiff in the year 2015 and, therefore, the plaintiff failed to prove that the defendant had deserted him for a period of two years prior to filing of the suit.

14. 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."*

15. The plaintiff has pleaded that the defendant is residing away from him since the year 2011, she is depriving him of his conjugal rights and she is also depriving him of the custody and visitation of his son master Vedansh.

16. In spite of service of summons of the suit, the defendant did not come forward to rebut the pleadings made in the plaint by filing a written statement. Therefore, the pleadings made in the plaint have been impliedly admitted by the defendant. It is a well established principle of law that admission is the best evidence and the admitted facts need no proof.

17. 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 plaintiff has filed his affidavit in support of the plaint averments, which remains uncontroverted. In these circumstances, the plaintiff has established cruel treatment meted out to him by the defendant by insulting him in presence of the plaintiff's friends and relatives and also by depriving him of his conjugal rights and cohabitation.

19. So far as the issue regarding desertion is concerned, the Family Court has decided this issue against the plaintiff only on the ground that he has pleaded in the plaint that the defendant left her company in the year 2011 whereas in the writ petition filed for issuance of writ of habeas corpus, the defendant made a statement that she will not live with the plaintiff, in the year 2015 and the Family Court found the aforesaid statement to be self contradictory.

20. We fail to appreciate as to how the aforesaid statements are self contradictory. The statement made by the defendant before this Court dealing with habeas corpus writ petition on 18.09.2015, that she was not willing to live with the plaintiff, was in fact an affirmation of the plaintiff's contention that she is not living with the plaintiff since

the year 2011 and she had expressed her unwillingness to resume co-habitation with the plaintiff even after separation of four years.

21. In **Debananda Tamuli v. Kakumoni Kataky**: (2022) 5 SCC 459, the Hon'ble Supreme Court held that: -

> ***"7.*** *...The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.*
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> ***8.*** *The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether a case of desertion is established or not will depend on the peculiar facts of each case. It is a matter of drawing an inference based on the facts brought on record by way of evidence."*

22. In the present case, the defendant left the company of the plaintiff in the year 2011, in the year 2015, she appeared before this Court in the Habeas Corpus petition filed by the plaintiff and made a statement that she would not come to live with the plaintiff. She did not appear before the Family Court and before this Court in spite of service of summons and she chose not to controvert the pleas of the plaintiff - appellant. These facts establish that the defendant has deserted the plaintiff since the year 2011 and she has no intention to resume cohabitation with the plaintiff. She has not even cared to appear before the Court to plead and prove that there was any sufficient cause for her living separate from the plaintiff. In absence of the defendant having leaded and proved any sufficient cause for her separate living, the Court cannot presume that she is living away from the plaintiff for any sufficient cause.

23. The Family Court has blamed the plaintiff for not making any effort for reconciliation. Making effort for reconciliation is not a condition

precedent for decreeing a suit for divorce. For deciding a suit for divorce, the Family Court is merely required to satisfy itself whether any of the grounds mentioned in Section 13 of the Hindu Marriage Act are made out. However, if the Court prefers to examine the conduct of the parties regarding making efforts for reconciliation, the conduct of both the parties should be considered. In the present case, the plaintiff has pleaded that the defendant has deserted him. The defendant did not respond to the summons issued to her and she did not come forward to assign any sufficient cause for her living separate from the plaintiff. She did not controvert the pleadings of the plaintiff. Therefore, the plaintiff has successfully proved his desertion by the defendant, which is continuing since the year 2011.

24. In view of the aforesaid facts, we are of the considered view that the plaintiff has successfully proved by his ex parte evidence that the defendant used to treat him with cruelty and she has deserted him since the year 2011.

25. The aforesaid facts are sufficient for grant of a decree of divorce in favour of the plaintiff-appellant. The Family Court has erred in dismissing the plaintiff's suit for grant of divorce.

26. In view of the aforesaid discussion, the appeal is allowed. The ex parte judgment and decree dated 29.11.2022 passed by the Additional Principal Judge-05, Family Court, Lucknow in Suit No. 2430 of 2017 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 12.11.2016.

27. Costs of the litigation are made easy.

[Subhash Vidyarthi, J.] [Rajan Roy, J.]

Order Date: 21.08.2024
Pradeep/-