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Mamta Goyal v. Ramgopal , 2011 PLRonline 0104

Rajasthan High Court

Jaipur Bench

Bhagwati, J.

Mamta Goyal v. Ramgopal

S.B. Civil Misc. Appeal No. 2015 of 2007

25.02.2011

Hindu Marriage Act, 1955 Sec. 13(1)(ia) – Divorce on the ground of cruelty – Non consummation of marriage – Appellant-wife is found to have lodged one FIR for the offences under Section 498A and 406 wherein the respondent-husband and his mother and father were arrested and remained in jail - The appellant-wife in the Court itself exhibited her adamant and callous attitude towards her husband, which leaves no manner of doubt in my mind that the appellant-wife is bent upon treating the respondent-husband with mental cruelty - It is abundantly clearly that the marriage between the parties had broken down irretrievably and there is no chance of their coming together or living together again - Parties have been admittedly living separately for more than 13 years - The irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the appellant-wife. [Paras 24 & 25]

S.K. Gupta, for Appellant; J.P. Goyal, for Respondent

JUDGMENT

BHAGWATI, J.—Challenge in this appeal is to the judgment and decree dated 11th May, 2007, whereby the District Judge, Dholpur ordered to dissolve the marriage between the appellant-wife and the respondent-husband by way of decree of divorce.

2. The factual matrix of the case, as culled out from the pleadings and evidence, can be succinctly stated as under: “The undisputed fact is that the marriage between the appellant-wife and the respondent-husband was solemnized on 24th November, 1997 at Basedi, District Dholpur. It is averred by the respondent-husband that right from the very beginning, the appellant-wife never treated him as her husband and did not allow to consummate the marriage till filing of the application. It is further averred in the petition that in 1998, the appellant-wife Mamta had written a letter to her parents, which indicated that she was never interested in the marriage. The appellant-wife unequivocally stated therein that neither she intended to marry him nor was she his wife. It is her parents who forcibly married her to her husband. As per the respondent-husband, the marriage was never consummated since 24.11.1997. This indifferent attitude of the appellant-wife amounts to cruelty. The husband implored the Court to grant the decree of divorce on this ground alone. Otherwise too, on the date of filing the application under Section 13 of Hindu Marriage Act, the parties had been living separately for the last seven years. In reply to the afore-stated pleadings of the respondent-husband, the appellant-wife only admitted the fact of their marriage being solemnized on 24th November, 1997, but denied all the rest of averments. The appellant-wife stated that she remained with her husband in his house between 24th November, 1997 to 26th March, 1999 and the marriage was consummated between this period. Thereafter the husband deserted her. She further submitted that it was not the appellant-wife, but the

respondent-husband, who was responsible for cruelty towards her. The conduct of husband was never fair and reasonable to the appellant-wife. The respondent-husband agreed before Women Commission, Jaipur to keep the appellant-wife and pursuant to the order of Women Commission, the wife went to her husband's house and started residing there, but she was turned out of the house on 26th March, 1999. Thus, the respondent-husband should not be allowed to take the benefit of his own wrong and the petition for divorce deserves to be dismissed."

3. The learned trial court framed as many as three issues on the basis of pleadings of the parties, which are thus

4. The respondent-husband Ram Gopal AW-1 put his own evidence on oath in support of his case, whereas the appellant-wife examined herself and produced two more witnesses NAW-2 Badri Singh and NAW-3 Ram Bharosi Lal to defend her case.

5. Heard the learned counsel for the parties and carefully perused the relevant material on record.

6. The appellant-wife has filed the instant appeal on the following grounds: i) Once it is admitted by the respondent-husband that the appellant-wife was living with him from 24th April, 1997 to 26th March, 1999, for almost 1 ½ years, the presumption would be that both were living as wife and husband and sexual relations are presumed to have been established between them, unless, of-course, a strong rebuttal is adduced by the husband. Thus, the learned trial court erred in arriving at a finding that the marriage between the parties was never consummated. ii) The learned trial court misinterpreted and misconstrued the letter Ex. A/2 written by wife to her parents. This letter has been read by the learned trial court in favour of the respondent-husband, whereas a bare reading of the letter reflects that the husband was cruel and indifferent towards his wife. iii) The appellant-wife has always been willing to live with her husband and maintain all conjugal relations, but it is the husband, who being a dominated person, has been trying to take advantage of his wrong. The learned trial court has given a wrong finding that the wife deserted her husband, whereas for desertion also, it is the husband, who is responsible. iv) Albeit, the appellant-wife has been living separately for the last so many years, but she is still ready and willing to live with her husband-respondent. Hence, the impugned judgment and decree dated 11th May, 2007 deserves to be set-aside and the divorce petition needs to be dismissed.

7. E Converso, the learned counsel for the respondent-husband defended the judgment and decree and contended the same to be apt and proper. He further contended that the marriage was never consummated and not allowing the husband to consummate marriage sans any plausible reason amounts to cruelty. He further contended that a plain and simple reading of the letter Ex. A/2 shows the intention of the appellant-wife for deserting the respondent-husband. He has cited the judgment of Samar Ghosh Versus Jaya Ghosh reported in 2007 (3) Supreme 26 in support thereof.

8. A bird's eye view of some of the decisions of Hon'ble Apex Court throwing light on this issue needs to be taken into consideration.

9. In the case of Naveen Kohli Versus Neelu Kholi reported in I (2006) DMC 489 (SC), the Larger Bench of Hon'ble Apex Court observed as under: "90. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again."

10. In the case of Samar Ghosh Versus Jaya Ghosh (supra), the Hon'ble Apex Court observed as under: "97.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty. (xiii)..... (xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal rule. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

11. In the case of *Rishikesh Sharma Versus Saroj Sharma* reported in 2006 DNJ (SC) 1061, while dealing with the similar controversy, Hon’ble Apex Court observed as under: “In our opinion it will not be possible for the parties to live together and therefore, there is no purpose in compelling both the parties to live together. Therefore the best course in our opinion is to dissolve the marriage by passing a decree of divorce so that the parties who are litigating since 1981 and have lost valuable part of life can live peacefully in remaining part of their life.”

12. In the case of *Savitri Pandey Versus Prem Chandra Pandey* reported in (2002) 2 SCC 73, the Hon’ble Apex Court observed as under: “Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty”, therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.”

13. In the case of *Smt. Suman Versus Arvind Kumar* reported in *Western Law Cases 2007 (Raj.) UC page 48*, it has been held by this Hon’ble Court that had it been a case of giving some benefit to the wrong doer, this Court would have interfered even in the appellate jurisdiction but this is not a fit case where there can be interference so as to keep the namesake relation of husband and wife, between the respondent and the appellant alive in a case where there is no chance of reunion between them.

14. In the case of *Susarla Subrahmanya Sastry Versus S. Padmakshi* reported in II (2005) DMC 707 (DB), the Division Bench of Andhra Pradesh High Court, while dealing with the term “cruelty” observed that relationship between parties irretrievably broken and because of non-cooperation and hostile attitude of respondent wife, appellant husband subjected to serious traumatic experience. It can safely be termed as ‘cruelty’ within meaning of Section 13(1)(ia) of Act.

15. It has been stated in the case of *Vinita Saxena Versus Pankaj Pander* reported in 2006 AIR SCW 1585 that non-consummation of marriage by itself constitutes mental cruelty and good ground to grant divorce. In coming to its conclusion, the Court referred to *Sheldon Versus Sheldon* {(1966) 2 All England Reported 257} and approved the following observation from *Rita Nijhawan Versus Balkishan Nijhawan* reported in AIR 1973 Delhi 200: “Matrimonial harmony, cohabitation and discharge of marital obligation by one spouse towards other is one of the most essential feature to keep matrimonial bond alive between the parties. When one of the spouses has totally withdrawn from the society of other as also either refusing to cohabit and / or denying to discharge his / her matrimonial obligation towards the other, it will be clear case of cruelty on the part of such spouse to whom such acts are attributable. Where the spouses are of normal physical and mental health, number of persistent refusal or inability of the sexual act would amount to cruelty. The marriage without vigorous sexual activity is an anathema. Denial of sexual activity in marriage has an extremely unfavourable influence on a wife’s or husband’s mind and body and leads to deprivation and frustration. There is nothing more fatal to a marriage than disappointment in sexual inter-course. To force a husband to such sexless life, which inevitably damages the physical as well as mental health is nothing, but cruelty.”

16. Sex plays an important role in marital life and as observed by the Hon’ble Apex Court in *Dastane (Dr. N.G.)*

Versus Dastane (Mrs. S.), it cannot be separated from other factors, which lend to matrimony a sense of fruition and fulfillment. Sex is a binding force to keep two spouses together and the denial thereof by one spouse to the other would affect mental health amounting to mental cruelty, especially in a case where the parties are young and have recently married after a prolonged courtship.

17. In the case of Parveen Mehta Versus Inderjit Mehta reported in 2002 (2) HLR 513 (SC), the foundation of the case of cruelty was based on the allegation made by the husband that right from the date one after the marriage, the wife was not prepared to cooperate with him in having sexual inter-course. Right from the beginning, the matrimonial relationship between the parties was not normal. The wife even refused to subject herself to her husband.

18. In the instant case, the respondent-husband is found to have sought the decree of divorce from his wife on the sole ground of cruelty stating about non consummation of marriage since the date of marriage till the date of filing the application. Albeit, the appellant-wife denied this averment and the learned counsel for the appellant has come forward with the argument that when the parties lived together for a period of 1 ½ years as wife and husband, it can be safely presumed that the marriage must have been consummated during this period. In contra, the only and the firm stand of the respondent-husband consistently has been that right from the day of marriage, it was never consummated. The wife did not allow him to have a coitus between them. The fact of non consummation of marriage between the parties has been substantiated by the letter Ex. A/2 of the appellant-wife herself, which she wrote to her parents. The letter reads thus:

19. Adverting to the facts of the instant case, it is noticed that the respondent-husband has consistently stated that from 24th November, 1997 when the marriage between them was solemnized, their marriage was never consummated till he filed the divorce petition under Section 13 of the Hindu Marriage Act before the competent court. This fact stands substantiated by letter Ex.A/2 written by the appellant-wife herself to her parents, wherein it has been categorically stated that, "....." It is also written by her in the letter that, "....."

20. It is further noticed that in para no. 1 of her affidavit Ex.-2, the appellant-wife deposed that her husband never touched her body, whereas in para no. 4 of the said affidavit, she specifically deposed that there had been relations of husband and wife and sexual intercourse took place between them. Thus, there are conflicting and contradictory statements with regard to consummation of marriage and that too in one breath. Albeit, she has categorically stated that she was physically and mentally tortured with regard to dowry, but no evidence in this respect has been led by her. It is not established as to by whom the demand of dowry was made and when it was made. In the absence of any clinching and documentary evidence, the plea of the appellant-wife is not found to be tenable and the same deserves to be outrightly rejected.

21. The fact of non consummation of marriage also stands established by the admission of the appellant-wife herself, which she made in a Civil Case No. 61/2005 titled as Mamta Versus Ramgopal pending before the Additional District Judge (Fast Track) No.1, Dholpur, where she admitted the letter Ex.-A/2 having been written by herself. The learned trial court is found to have discussed and critically analyzed the entire evidence led by both the parties on this issue ad-longtum. His appreciation as also the finding with regard to non consummation of marriage between the parties is found to be cogent and judicious. Thus, the argument advanced by the learned counsel for the appellant that since both the parties lived together for 1 ½ years, so it shall be presumed that the consummation of marriage must have been taken place, is not found to be tenable.

22. It has also been stated in the memo of appeal that sexual relations shall be presumed to have been established between the parties unless of-course strong rebuttal is adduced by the husband. This argument of the learned counsel for the appellant is totally devoid of force. In the instant case, the respondent-husband has filed the application under Section 13 of Hindu Marriage Act seeking divorce on the ground of non consummation of marriage (cruelty). It is not wife appellant who sought divorce on this ground, hence in such a situation, it is for the wife-appellant to prove the consummation of marriage by a strong rebuttal adduced by

her. The burden to prove non consummation of marriages lies on the respondent-husband, but the burden to rebut it lies on the appellant-wife and she is found to have utterly failed in her such attempts.

23. I called the parties to marriage and made an effort to explore the possibility of reconciliation. They were given sufficient time. Albeit, the wife expressed her desire to live with the respondent-husband, but the respondent-husband was not at all prepared to live together even for a moment. Though the appellant-wife showed her willingness to live with the respondent-husband, but the manner, in which she presented herself on two or three dates of hearing in the Court and spoke always bitter about her husband, it cannot be said that she was serious about her willingness.

24. The appellant-wife is also found to have lodged one FIR with the Police Station, Basedi for the offences under Section 498A and 406 of Indian Penal Code, wherein the respondent-husband and his mother and father were arrested and remained in jail. The appellant-wife in the Court itself exhibited her adamant and callous attitude towards her husband, which leaves no manner of doubt in my mind that the appellant-wife is bent upon treating the respondent-husband with mental cruelty. It is abundantly clearly that the marriage between the parties had broken down irretrievably and there is no chance of their coming together or living together again.

25. When we take into consideration aforementioned factors along-with an important circumstance that the parties have been admittedly living separately for more than 13 years, the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the appellant-wife. In view of above, the impugned judgment is found to be just and proper, which suffers from no infirmity. I am in full unison with the findings arrived at by the learned trial court and to my view too, it warrants no intervention.

26. For the reasons stated above, the appeal being bereft of any merit, stands dismissed and the impugned judgment and decree dated 11th May, 2007 passed by the learned District Judge, Dholpur is maintained.

27. No order as to costs.

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