Debananda Tamuli v. Kakumoni Kataky , 2022 PLRonline 0601 (SC)

SUPREME COURT OF INDIA

Before:-Ajay Rastogi and Abhay S. Oka, JJ.

Debananda Tamuli – Appellant

Versus

Smti Kakumoni Kataky – Respondent

Civil Appeal No.1339 of 2022 [@ SLP(C) No.22667 of 2019].

15.2.2022.

Hindu Marriage Act, 1955, Section 13(1)(ia) and (ib) – Divorce – Cruelty and desertion – It is not even the case made out by the respondent that she came to Tezpur intending to resume the matrimonial relationship – Merely because on account of the death of the husband's mother, the respondent visited her matrimonial home in December 2009 and stayed there only for one day, it cannot be said that there was a resumption of cohabitation – Intention on the part of the respondent to resume cohabitation is not established – An inference can be drawn that there was animus deserendi on the part of the wife – Has not pleaded and established any reasonable cause for remaining away from her matrimonial home – Ground of desertion under clause (ib) of sub-section (1) of Section 13 of HM Act has been made out as the desertion for a continuous period of more than two years . [Para 11, 12]

Facts: Marriage solemnized on 17th June 2009 – Stayed together only till 30th June 2009 – Petition for divorce filed on 9th September 2011 – Wife stated she became aware of the serious illness of husbands mother 19th December 2009and stayed with her sister-in-law – According to the respondent, on 20th December 2009, the husband told her to leave – She was informed about the death of the husbands mother – Came back and visited the husband's house on 21st December 2019, and left on the next day – In the affidavit in lieu of examination-in-chief, it is not even the case made out by the respondent that she came back intending to resume the matrimonial relationship.

Cases Referred :-

(2013) 9 SCC 1, Darshan Gupta v. Radhika Gupta

(1964) 4 SCR 331, Lachman Utamchand Kirpalani v. Meena @ Mota,

For the Appellant :- Mr. Manish Goswami, Mr. Rameshwar Prasad Goyal, Advocates. For the Respondent :- Ms. Nidhi, Advocates.

JUDGMENT

Abhay S. Oka, J. – Leave granted.

This appeal arises from a matrimonial dispute between the appellant-husband and the respondent-wife. The petition filed by the appellant-husband on the grounds of cruelty and desertion set out in clauses (ia) and (ib) of sub-section (1) of Section 13 of the Hindu Marriage Act, 1955 (for short "HM Act") was dismissed by the District Court. By the impugned order, the appeal preferred by the appellant against the decree of the District Court has been dismissed by the Gauhati High Court.

2. The marriage between the appellant and the respondent was solemnized on 17th June 2009 at Tezpur in Assam. According to the appellant's case, from 30th June 2009, the respondent left the matrimonial home with all her personal belongings. According to the appellant's case, from 30th June 2009, the respondent deserted him.

3. On 9th September 2011, the appellant filed the petition for seeking a decree of divorce in the District Court at Tezpur on the grounds of cruelty and desertion. The ground of cruelty was based on an allegation that the respondent consistently refused to consummate the marriage, thereby causing mental agony to the appellant. The appellant did not succeed before both the Courts. As can be seen from the Orders passed by this Court from time to time, an effort was made to bring about an amicable settlement in the matrimonial dispute. The case was referred to mediation which eventually failed. After that, we interacted with the parties on video conference. However, an amicable settlement could not be arrived at.

4. Shri Manish Goswami, the learned counsel appearing for the appellant submitted that it is an admitted position that the marriage was not consummated. His submission is that the refusal by the respondent to consummate marriage caused mental cruelty to the appellant. He submitted that after 30th June 2009, the respondent never showed any inclination to return to the matrimonial home. She never had any intention to start cohabiting with the appellant. He submitted that though on 21st December 2009, the respondent visited the matrimonial home for a day, it was for the reason of the death of the appellant's mother. Therefore, it cannot amount to the resumption of matrimonial relationship. He placed reliance on the decision of this Court in the case of ***Lachman Utamchand Kirpalani v. Meena @ Mota, (1964) 4 SCR 331*** on the concept of desertion. He submitted that the law laid down by this Court in the said decision has been consistently followed till date. He submitted that both the Courts committed an error by holding that the ground of desertion was not made out. The learned counsel lastly urged that in view of the irretrievable breakdown of marriage, this Court should exercise its plenary jurisdiction under Article 142 of the Constitution of India to pass a decree of divorce.

5. Ms. Nidhi, the learned counsel appearing for the respondent submitted that the appellant has not established that there was no consummation of marriage. She submitted that the evidence is to the contrary. She invited our attention to the explanation to subsection (1) of Section 13, which defines desertion. She urged that even the factum of desertion has not been established by the appellant, as rightly held by the District Court and the High Court. She invited our attention to the deposition of the respondent recorded by the District Court. She submitted that there was no intention on the part of the respondent to desert the

appellant. On the contrary, the appellant has made no efforts to resume cohabitation. She relied upon a decision of this Court in the case of ***Darshan Gupta v. Radhika Gupta, (2013) 9 SCC 1***. She submitted that merely because husband and wife are staying separately, an inference regarding desertion on the wife's part cannot be drawn. Her submission is that as a case for grant of divorce on any of the grounds specified in sub-section (1) of Section 13 of HM Act is not made out, this Court should not exercise its jurisdiction under Article 142 of the Constitution of India for dissolving the marriage. She urged that issue whether such a power can be exercised under Article 142 to dissolve a marriage on account of a long separation has been referred to the consideration of the Constitution Bench.

6. The learned counsel for the appellant urged that if this Court is not satisfied that grounds of divorce as pleaded by the appellant are made out, this is a fit case to put an end to the prolonged agony of the parties by dissolving the marriage by exercising the plenary powers of this Court under Article 142 of the Constitution.

7. We have given careful consideration to her submissions. Firstly, we deal with the issue of desertion. The learned counsel appearing for the appellant relied upon the decision of this Court in the case of *Lachman Utamchand Kirpalani* (supra) which has been consistently followed in several decisions of this Court. 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. The view taken by this Court has been incorporated in the Explanation added to sub-section (1) of Section 13 by Act No.68 of 1976. The said Explanation reads thus:

*"**13. Divorce.**– (1) .....*

[3][Explanation.-In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]"*

[3 Substituted by Act 68 of 1976*

(w e f 27-05-1976)]

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.

9. Now, coming to the facts of the case, there is no dispute that the marriage between the parties was solemnized on 17th June 2009 and that they stayed together only till 30th June 2009. The petition for divorce was filed on 9th September 2011. As per clause (ib) of sub-section (1) of Section 13 of HM Act, the desertion must be for a continuous period of not less than two years immediately preceding the institution of the petition. In her affidavit in lieu of examination-in-chief filed on 24th June 2015, the respondent stated that after she became aware of the serious illness of the appellant's mother, she came to Tezpur on 19th December 2009. She stayed with her sister-in-law. According to the respondent, on 20th December 2009, the appellant told her to leave Tezpur. Therefore, she left Tezpur. After she was informed about the death of the appellant's mother, she came back to Tezpur and visited the appellant's house on 21st December 2019, and left on the next day. In the affidavit in lieu of examination-in-chief, it is not even the case made out by the respondent that she came to Tezpur intending to resume the matrimonial relationship.

10. The perusal of the respondent's evidence does not disclose any effort made by her to resume the matrimonial relationship. She has not filed a petition for restitution of conjugal rights. As can be seen from the evidence on record, the appellant is carrying on business at Tezpur. The respondent is working as a Lecturer in University Law College at Gauhati. There is no dispute that from 1st July 2009 till date, they are staying separately.

11. Merely because on account of the death of the appellant's mother, the respondent visited her matrimonial home in December 2009 and stayed there only for one day, it cannot be said that there was a resumption of cohabitation. She has not stated that she came to her matrimonial home on 21st December 2009 with the intention to resume cohabitation. The intention on the part of the respondent to resume cohabitation is not established. Thus, in the facts of the case, the factum of separation has been proved. From the evidence on record, an inference can be drawn that there was animus deserendi on the part of the respondent. She has not pleaded and established any reasonable cause for remaining away from her matrimonial home.

12. Thus, in our considered view, the ground of desertion under clause (ib) of sub-section (1) of Section 13 of HM Act has been made out as the desertion for a continuous period of more than two years before the institution of the petition was established in the facts of the case. But, after having carefully perused the evidence on record, we find that no case is made out to disturb the findings recorded by the Courts on the issue of cruelty.

13. Earlier, when this Court made an effort for bringing about an amicable settlement, the appellant had offered to pay a lump sum amount of Rs.10,00,000/- (Rupees ten lakhs) to the respondent. In the facts of the case, we propose to direct the appellant to pay a sum of Rs.15,00,000/- (Rupees fifteen lakhs) to the respondent.

14. Hence, the impugned judgments are set aside. The Civil Appeal is allowed in part. The marriage solemnized between the parties on 17th June 2009 shall stand dissolved by a decree of divorce under clause (ib) of sub-section (1) of Section 13 of the Hindu Marriage Act, 1955.

15. We direct the appellant-husband to deposit a sum of Rs.15,00,000/- (Rupees fifteen lakh only) in this Court within a period of 8 weeks from today.

16. It will be open to the respondent to withdraw the said amount of Rs.15,00,000/- (Rupees fifteen lakh). It will also be open to her to withdraw a sum of Rs.50,000/- (Rupees fifty thousand) already deposited by the appellant.

17. In the event, the amounts deposited by the appellant in this Court are not withdrawn by the respondent within a period of two months from the date on which the sum of Rs.15,00,000/- (Rupees fifteen lakh) is deposited, the Registry shall place the appeal before this Court for issuing necessary directions.

18. All the pending applications, if any, also stand disposed of. There shall be no orders as to costs.