

Court No. - 44

A.F.R

Case :- FIRST APPEAL No. - 241 of 2006

Appellant :- Smt. Vijai Lakshmi

Respondent :- Lalji

Counsel for Appellant :- A.K. Gupta, A.K. Mishra, Ashish Agrawal, Dinesh Gupta, Dinesh Mishra

Counsel for Respondent :- Satish Kumar Mishra, A.C. Tiwari, Arvind Kumar Srivastava, H.P. Dubey, Rajesh Kishore Srivastava, Satish Kumar Mishra

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Krishan Pahal, J.

1. No one has put in appearance on behalf of the appellant-wife.
2. A perusal of the order dated 04.10.2021 passed by this Court indicates that the parties had appeared in the Court personally but they have not been able to reconcile. The appeal, thus, has been posted for final disposal.
3. Heard learned counsel for the respondent and perused the record.
4. This is wife's appeal against the judgment and order dated 17.05.2006 whereby divorce decree had been passed in favour of the husband.
5. A perusal of the impugned order of the Family Court indicates that the decree of divorce had been granted on the premise that the wife had lodged a false complaint namely Case Crime No.6 of 2003 against the husband which had resulted in incarceration of the husband for 4 days and as such the wife had caused mental cruelty upon the husband. On account of the trauma, the mother of the respondent-husband had died. It was further noted that initially on the similar complaint sought to be filed by the wife, a compromise had been arrived between the parties in the police station and both the parties had reconciled with the intervention of the Station House Officer

which made it evident that there was no serious dispute. However, the wife had turned around and contacted the Senior Superintendent of Police again to lodge the report on the allegations of demand of dowry. The Family Court has, thus, opined that the wife had exaggerated the whole matter and lodged a false complaint against the husband for demand of dowry. In such a situation, the marital relationship between the parties had been completely broken and the decree of divorce was liable to be granted.

6. Learned counsel for the respondent-husband, has, defended the decree on the premise that there was no reasonable excuse with the wife to leave her matrimonial home after the compromise had been arrived between the parties with the intervention of wise persons and lastly the police. The wife was guilty of not honouring the terms of the compromise and leaving her matrimonial home without any reason.

7. It is further submitted that the appellant-wife was harassing the respondent and pressurising him to leave his mother alone and move to her paternal home. When the respondent-husband did not accede to the said request she had threatened him to lodge a false complaint and with dire consequences. On 21.11.2002, when the respondent-husband was at home, she had left the house with all jewellery, clothes and Rs.5,000/- without any information. In the proceeding under Section 9 of the Hindu Marriage Act, however, a compromise had been arrived between them on 09.02.2003 and thereafter, the wife had returned to her matrimonial home. But, again on 17.03.2003, she had left with all the clothes and jewellery in the absence of her husband and despite best efforts of the husband, she did not return and lodged a criminal case on the allegations of demand of dowry. On account of the said cruelty inflicted by his wife, the widow mother of the appellant had died which had resulted in severe mental cruelty to the respondent-husband and as such he was constrained to file the divorce suit.

8. Testing these submissions of the learned counsel for the

respondent, having gone through the findings returned by the Family Court as also the statements of the appellant-wife and the respondent-husband, we may note that there are allegations and counter allegations of the parties against each other. On the one hand, the respondent husband had pleaded that his wife had left her matrimonial home without any reasonable excuse and she had taken all clothes and jewellery alongwith cash of Rs.5,000/- on 21.11.2002 when he was present in his house but there is no statement of the husband that he had tried to stop his wife from leaving her matrimonial home. After compromise between the parties, on 09.02.2003 the wife had returned to her matrimonial home. As per the version of the husband, the wife had left her matrimonial home again on 17.03.2003 in his absence taking all clothes and jewellery.

9. This version of the respondent that the appellant-wife had again left her matrimonial home on 17.03.2003 with clothes and jewellery seems to be false at its face value. The reason being that as per own version of the husband, while leaving her matrimonial home on 21.11.2002 his wife had taken all her clothes and jewellery then where was the occasion for her to take the clothes and jewellery again on 17.03.2003, moreso, when the husband had not stated that his wife had brought back her jewellery on returning to her matrimonial home on 09.02.2003.

10. In the said circumstance, the allegations of husband that the wife had left her matrimonial home in his absence with all clothes and jewellery *per se* appears to be false. We may further note that no report had been lodged by the husband that the wife had taken jewellery on 17.03.2003 other than her *stree-dhan* in his absence. Further, apart from the bald assertions of the husband, there is no other evidence on record which would substantiate the allegations of the husband that his wife had refused to discharge her matrimonial obligations without any reasonable excuse.

11. On the other hand, the appellant wife in her statement recorded on 15.05.2006 had categorically stated that she was thrown out of her matrimonial home by the husband after she was assaulted physically. Her husband used to demand dowry and assault her on account of which a report was sought to be lodged by her when a compromise had been arrived on 23.01.2003 with the intervention of the police. The copy of the compromise is on record. However, her husband had again thrown her out and hence she had lodged the report. She has categorically stated that she did want divorce.

12. We may further note that in terms of the compromise dated 23.01.2003 the wife had returned to her matrimonial home on 09.02.2003, but, thereafter, in barely one month, she had to approach the Senior Superintendent of Police on 17.3.2003 to lodge the first information report regarding the demand of dowry after she was thrown out as per her version.

13. No one knows as to what had happened inside the four walls of the house. But the record indicates that the marriage was solemnised on 06.03.2002 and the dispute arose within 4-5 months of the marriage. The allegations and counter allegations are made by the couple to assert that the fault lies on the other side. In this circumstance, it is not possible for the Court to find out as to who was at fault. But that by itself cannot be a reason to grant divorce. The respondent-husband, who is the plaintiff in the divorce suit, was required to substantiate his allegations of commission of cruelty by the wife by bringing cogent evidence. Mere fact that the wife had lodged the criminal complaint on the allegations of atrocities committed by the husband after a compromise had been arrived between the parties would not be a reason to hold that the complaint was false and the wife had committed cruelty by lodging the said report. The ground for seeking the decree of divorce, i.e cruelty, taken by the husband in the plaint could not be proved by bringing any cogent material on record. The bald assertion of the husband in his statement recorded before the

Family Court is not sufficient to prove cruelty on the part of the wife.

14. Considering the discussion in the judgment and order dated 17.05.2006, we find that the Family Court had been swayed away by the fact of lodging of the first information report under Section 498-A I.P.C after the wife had left her matrimonial home on 09.02.2003. In any case, the earlier compromise between the parties with the intervention of the police or the act of the wife in lodging the first information report cannot be a reason to presume that only she was at fault and there was no fault on the part of the husband, *moreso*, when the wife had come forward with the categorical assertion that she was thrown out of her matrimonial home by the husband after beating her.

15. The findings returned by the trial court for granting the divorce on the ground of cruelty, therefore, are not sustainable.

16. Further contention of the learned counsel for the respondent-husband is that the couple are separated for the last 18 years and there are no chances of revival of matrimonial relationship and hence the husband is entitled for the decree of divorce on the ground of 'irretrievable breakdown of marriage', in view of the decision of the Apex Court in the cases of *Naveen Kohli vs. Neelu Kohli 2006 (4) SCC 558* and *Prakash Chandra Kapoor vs. Smt. Ritu Kapoor 2005 (2) SCC 22*.

17. Considering this contention of the learned counsel for the appellant we may note that no such ground for divorce exists in the Hindu Marriage Act. In an appropriate cases, the Apex Court has granted decree of divorce exercising its unique jurisdiction under Article 142 of the Constitution of India, to do complete justice between the parties. Such a course had been adopted in various kinds of cases where there were *inter se* allegations between the parties and in order to put a quietus to the matter, where the parties withdrew those allegations and by mutual consent.

18. It has been noted by the Apex Court in *Shivsankaran vs. Santhimeenal reported in 2021 (5) ALD 286* that the Law Commission in its 71st report made recommendation while departing from the fault theory of divorce to recognise situations where a marriage has completely broken and there is no possibility of reconciliation. It had recommended for incorporation of the situation where neither party need individually be at fault for a breakdown of the marriage which may be the result of prolonged separation, clash of personalities, or incompatibility of the couple. As noted in the Law Commission report, such marriages are merely a shell out of which the substance is gone. For such situations, the Law Commission recommended that the law be amended to provide for 'irretrievable breakdown of marriage' as an additional ground of divorce. This recommendation was reiterated in its 217th report in the year, 2010 by the Commission. But, these recommendations, have not been implemented. The bill introduced by the Government in the year 2010 namely the Marriage Laws (Amendment) Bill, 2010, reintroduced as the Marriage Laws (Amendment) Bill, 2013, was never passed.

19. It is observed therein that under the Hindu Law, the institution of marriage is sacramental in character and is supposed to be an eternal union of two people. The society at large does not accept divorce, given the heightened importance of marriage as a social institution in India. It is more difficult for women to retain social acceptance after a decree of divorce. This, coupled with the law's failure to guarantee economic and financial security to women in the event of a breakdown of marriage; is stated to be the reason for the legislature's reluctance to introduce irretrievable breakdown as a ground for divorce-even though, there may have been a change in social norms over a period of time. Not all persons come from the same social background, and having a uniform legislative enactment is thus, stated to be difficult. It is in these circumstances that the Apex Court has been exercising its jurisdiction, despite such reservations, under Article 142 of the

Constitution of India.

20. As regards the proceedings before us, the present appeal under Section 19 of the Family Courts Act is nothing but an extension of the proceedings of the trial court. While exercising the power of appellate Court, we can grant the decree of divorce in a petition under Section 13(1) of the Hindu Marriage Act, only, in case, any of the grounds for seeking divorce as provided under the said Section is found to be in existence. The 'irretrievable breakdown of marriage' not being a ground of divorce under Section 13(1) of the Hindu Marriage Act, the decree of divorce cannot be granted on the said ground while deciding the appeal arising out of the proceeding under Section 13(1) of the Hindu Marriage Act.

21. The contention of the learned counsel for the respondent seeking dismissal of the appeal on the ground that there are no chances of revival of matrimonial relationship and the husband is entitled for the decree of divorce on account of "irretrievable breakdown of marriage", therefore, is found devoid of merits.

22. As noted above, the respondent-husband has not been to establish the plea of cruelty by the wife i.e. the ground taken by him to seek the decree of divorce in the petition under Section 13(1) of the Hindu Marriage Act filed in the year 2003. The wife has made a categorical claim that she had been thrown out of her matrimonial home as the husband was demanding dowry. The criminal case had been lodged by the wife upon intervention of the Superintendent of Police. Nevertheless, during pendency of the present appeal, on the application filed by the appellant-wife, vide order dated 01.04.2013, monthly maintenance of Rs.10,000/- w.e.f. 01.04.2013 onwards had been awarded. The order-sheet indicates that the order of interim maintenance was not complied with. As a result of which, on 26.05.2014, direction was issued to the respondent to clear all arrears of interim maintenance till June, 2014. The arrears of maintenance had

been paid only upon the intervention of the Court. Again, the order dated 06.10.2016 in the order sheet indicates that the respondent-husband did not pay the interim maintenance. It was, therefore, observed in the order dated 17.10.2016 that the appellant-wife was at liberty to recover the amount of maintenance as arrears of land revenue as was due till that date and for future.

23. Again on 21.01.2016, this Court had to issue a non-bailable warrant to ensure presence of the respondent in custody to provide interim maintenance to the appellant-wife. And only after the respondent-husband had appeared in custody before this Court on 05.12.2016, he had deposited the arrears of maintenance by way of cheque in the account of appellant-wife. Again, by the order dated 08.11.2017, with a view to end the ordeal of the wife, it was directed by this Court that the monthly maintenance of Rs.10,000/- shall be transferred directly in her bank account through RTGS by 7th of each succeeding month.

24. Further, an application No.83384 of 2017 supported by an affidavit was filed by the wife seeking for enhancement of compensation as determined vide order dated 01.04.2013 as well as to grant litigation expenses in lump sum.

25. While disposing of the said application, it has been noted in the order dated 12.12.2017 that there had been repeated defaults in payment of monthly maintenance as fixed by this Court though the respondent was earning a handsome amount on monthly basis being employed as permanent driver in Railways and after enforcement of 7th Pay Commission, there had been substantial increase in his salary. An additional income of Rs.20,000/- per month was stated to be earned by the husband in view of the lease rent of the property owned by him. The husband, however, did not respond to the application of wife and hence, having noted that the assertions of wife remained uncontroverted, monthly maintenance of Rs.30,000/- per month was

fixed from December, 2017 payable by 7th of each succeeding month. In addition to the same, the appellant-wife has been held entitled to litigation expenses in lump sum for Rs.30,000/-, payable within a period of one month.

26. The recall application seeking recall of the order dated 12.12.2017 filed by the respondent-husband had been dismissed vide order dated 10.12.2018 with the observations as under:-

"2. This is an application seeking recall of this Court's order dated 12.12.2017 whereby amount of maintenance was enhanced to Rs. 30,000/- per month considering the fact that monthly salary of respondent-husband w.e.f. 01.01.2016 is more than Rs. 1 lac.

3. This factum of salary, we find is not in dispute and, therefore, looking to entire facts and circumstances, we do not find any reason to recall the order dated 12.12.2017. Application is accordingly rejected."

27. The order dated 28.09.2020 further indicates that the learned counsel for the respondent-husband was directed to prepare a draft of the entire defaulted amount outstanding against the appellant-wife and produce the same on the next date fixed. There is nothing on record to indicate whether the draft had been presented by the respondent-husband.

28. The above facts make it evident that the respondent-husband, in utter disregard of the directions of this Court, has refused to maintain his legally wedded wife since 2013. Prior to that, the wife was not getting maintenance as neither interim maintenance was awarded by the Family Court nor permanent alimony was granted while decreeing the divorce suit. Resultantly, the appellant-wife has been neglected by the respondent-husband since the year 2003 when, according to him, she had left her matrimonial home on her own. The vague assertions in the divorce petition of the wife of leaving her matrimonial home without any reasonable excuse could not be established by bringing any cogent material on record. It, thus, appears that the respondent-

husband has utterly failed to discharge his matrimonial obligation. For the fact that the dependent wife has failed in matrimonial alliance, she cannot be left as a destitute. The moral and legal duty of the husband to maintain his wife is not discharged by the institution of the divorce suit.

29. It is settled that the maintenance laws have been enacted as a measure of social justice to provide recourse to dependent wife and children for their financial support; so as to prevent them from falling into destitution and vagrancy. Article 15(3) of the Constitution of India reinforced by Article 39 of the Constitution of India envisages a positive role of the State in fostering change towards the empowerment of women and has led to the enactment of various legislations from time to time. In ***Romesh Chander Kaushal vs. Veena Kaushal reported in 1978 (4) SCC 70***, Krishna Ayyar J., while considering the object of maintenance laws observed as under:-

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause- the cause of the derelicts."

30. The Apex Court in the case of ***Rajnish vs. Neha & another reported in 2021 (2) SCC 324*** considering the scope of the law of interim maintenance has held that the pre-requisite for grant of maintenance under Section 24 of the Hindu Marriage Act is that the applicant does not have independent income, which is sufficient for her or his support, during pendency of the lis. Section 24 of the Hindu Marriage Act provides for maintenance pendente lite, where the Court may direct to pay the expenses of the proceedings and pay such monthly amount, which is considered to be reasonable, having regard

to the income of both the parties. While considering the criteria for determination of the quantum of maintenance, it is observed that there can not be any straitjacket formula and the quantum would depend upon the factual situations and the Court should mould the claim for maintenance based on various factors before it. The objective of granting interim/permanent alimony is to ensure that the dependent spouses is not reduced to destitution or vagrancy on account of the failure of the marriage.

31. In the instant case, it is admitted on record that the appellant-wife has no source of income whereas the respondent-husband is a permanent driver in Railways and is earning a handsome salary. For a long time, during the pendency of the present appeal, the respondent-husband has succeeded in flouting the orders of this Court granting interim maintenance to sustain the appellant-wife. Payments of some arrears had been made only upon intervention of the Court and at one point of time, the Court had to require the presence of the respondent-husband in custody. This situation, further leads to the belief that the fault lies on the part of the husband in not honouring his matrimonial obligations. It is settled law that a person seeking a relief in the Court of law cannot take benefit of his own wrong.

32. The appellant-wife has already suffered a lot on account of negligence of her husband. The respondent husband being a wrongdoer cannot be allowed to walk away out of the matrimonial alliances on the ground that the marriage has broken down. For this reason also, the plea for grant of decree of divorce on the ground of “irretrievable breakdown of marriage” is not acceptable.

33. Lastly, we may note that the respondent-husband has sought decree of divorce on irrelevant grounds based on reckless allegations and the wife is living separately since 2003 without any financial support. In order to prevent the appellant-wife from reaching the stage of destitution, in the peculiar facts and circumstances of the present

case, we find it just and proper that monthly maintenance be awarded to the appellant-wife as has been fixed by this Court to the tune of Rs.30,000/-, which shall be payable to her regularly even after the decision of the present appeal.

34. We are conscious of the situation that we are denying the decree of divorce to the respondent-husband while allowing the present appeal and the result is that the matrimonial relationship between the parties subsist. Consequently, the husband and wife are obliged by law to live together and in such case the respondent-husband would obviously maintain his wife. However, in this case, the possibility of the parties living together seems remote. The respondent has been neglected his wife who is living separately for a long time for no reason.

35. Section 18 of the Hindu Adoptions and Maintenance Act, 1956 recognises the right of a Hindu wife to seek maintenance from her husband during her life-time while living separately from her husband. Sub-Section (2) of Section 18 provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance; if he is guilty of desertion, i.e. abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her.

36. In the instant case, it is evident from the record that the respondent-husband has abandoned his wife without any reasonable cause and filed the suit for divorce on irrelevant grounds to get rid of her. He has been willfully neglecting her during the continuation of the divorce proceedings and denied payment of interim maintenance (bare means of sustenance) fixed by this Court during the pendency of the present appeal.

37. The right to claim maintenance under Section 18 of the Act, 1956 is a substantive right. The Family Courts constituted under the Family Courts Act, 1984 have jurisdiction exercisable by a Civil Court

in respect of the suits and proceedings, of the nature referred to in the explanation to Section 7(1) of the Family Courts Act, which includes a suit or proceeding for maintenance.

38. Under the scheme of the Act' 1984, the Family Courts have been given liberty to lay down their own procedure with a view to arrive at the truth of the facts alleged by one party denied by the other, i.e. for effective determination of the dispute before it under Section 10(3) of the Family Courts Act' 1984. Strict rule of evidence is not applicable in the proceedings before the Family Courts and the evidences are generally accepted on affidavits.

39. The present appeal under Section 19 of the Family Courts Act is extension of the proceedings of the Family Court. Meaning thereby, this Court can exercise the same jurisdiction as has been conferred upon the Family Court under the Family Courts Act, 1984.

40. For the claim of maintenance under Section 18 of the HAM Act, the appellant wife has to approach the Family Court. The appellant has suffered for long having been neglected by her husband who took vow to maintain her. We cannot be oblivious of the fact that in case the appellant-wife is directed to approach the Family Court, she may be dragged in a long drawn litigation to get the bare means of sustenance, i.e. maintenance from her husband. The respondent who did not obey this Court's order will not easily agree to pay the maintenance. In the said scenario, we see no reason to leave the wife abandoned and relegate her to seek maintenance by instituting fresh proceedings before the Family Court which may take years.

41. For the above reason, exercising the jurisdiction of the appellate court under Section 19 of the Family Court Act' 1984 invoking the provisions of Section 18 of the Hindu Adoption and Maintenance Act, 1956, we are of the considered opinion that while the wife is forced to live separately as the respondent-husband has deserted her without any reasonable excuse, she is entitled for monthly maintenance during her

life-time which is being fixed to the tune of Rs.30,000/- per month as has been determined by this Court, after consideration of the affidavits of the parties.

42. However, the appellant-wife is at liberty to seek enhancement of the maintenance amount by moving a proper application (by bringing fresh action) before the competent court in accordance with law.

43. Further, in case the husband is ready to discharge his matrimonial obligations by keeping his wife alongwith him and the appellant-wife agrees to his request, i.e. if the parties agree to live together in future, the above direction to pay interim maintenance shall stand automatically modified in terms of the agreement and the liability of the respondent-husband to maintain his wife by paying the fixed monthly maintenance, would stand exhausted.

44. However, the appellant wife is held entitled to the arrears of monthly maintenance from the date it has been fixed by this Court vide order dated 01.04.2003, and enhanced by the order dated 12.12.2017, till the date of this order. In addition to the same, the cost of the proceedings to the tune of Rs.30,000/- in lump sum, as determined by the order dated 12.12.2017, is also liable to be paid, if remained unpaid.

45. We further provide that the arrears of monthly maintenance and the litigation expenses, if not paid in full, shall be paid within a period of two months from today.

46. In case of any default on the part of the respondent-husband to pay the monthly maintenance or the arrears thereof and the litigation expenses as directed above, it would be open for the appellant-wife to seek execution by approaching the competent Court and in that case the entire outstanding amount would be liable to be recovered as arrears of land revenue. In the alternative, the appellant wife would be at liberty to approach the employer of the respondent-husband to seek

deduction directly from his salary and to transmit the monthly maintenance and the outstanding arrears in her saving bank account.

47. For the above discussion, the judgment and order dated 17.05.2006 passed by the Additional Family Judge, Allahabad in Marriage Petition No. 26 of 2003 granting the decree of divorce is found suffering from serious infirmity and is hereby set aside. The Matrimonial Petition no.26 of 2003 (Lalji vs Vijay Laxmi) stands dismissed.

48. With the observations and directions made above, the appeal is **allowed.**

Order Date :- 27.10.2021

P Kesari