

Court No. - 39

Case :- FIRST APPEAL No. - 715 of 2004

Appellant :- Sarvesh Kumar Sharma

Respondent :- Smt. Sarvesh Kumari Sharma

Counsel for Appellant :- Radhey Shyam, Anil Kumar, Rajesh Kumar Shaukla

Counsel for Respondent :- Vishwa Pratap Singh

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Sri Ram Chandra Srivastava along with Sri Manoj Kumar Singh, learned counsel for the appellant.
2. Matter has been listed peremptorily today. List has been revised. None appears for the respondent. Accordingly, the appeal has been heard on merits.
3. Present appeal has been filed under Section 28 of the Hindu Marriage Act, arising from judgment and order dated 28.04.2004 passed by Additional District Judge/Special Judge, Budaun in Matrimonial Case No. 208 of 1995 (Sarvesh Kumar Sharma Vs. Smt. Sarvesh Kumari Sharma). By that order, the learned Court below has dismissed the divorce suit instituted by the appellant.
4. Marriage between the parties was solemnized on 23.5.1980. There are no children born to them. The appellant is working as a Tube-well Operator, drawing salary about Rs. 45,000/- per month, whereas respondent is described to be working as an Angadbadi Karyakarti since 1999. First separation was suffered by the parties in the year 1992. At that stage, criminal proceeding had also arisen at the instance of the respondent, who alleged demand of dowry and cruelty arising therefrom. At that stage, settlement was reached between the parties and its

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terms were reduced to writing on 1.9.1994/4.10.1994. In that, it was recorded that the parties would revive their matrimonial relationship. Further, the respondent agreed to withdraw from the criminal cases instituted by her.

5. It is also not disputed to the appellant that the respondent did withdraw from the criminal cases. Accordingly, the appellant was acquitted from charge of demand of dowry on 26.6.1995. Within a short time therefrom, 3.7.1995, the respondent was again turned out from her matrimonial house and the present divorce proceedings were instituted within two weeks therefrom on 29.7.1995.

6. The correctness of the above fact finding recorded by the learned Court below could not be doubted by learned counsel for the appellant. Once, it was proven that it is the appellant who had turned out the respondent from her matrimonial home that too by practicing deceit in making the respondent believe that the parties would revive their matrimonial relationship subject to the respondent withdrawing from the criminal case, no occasion survived with the learned Court below to consider any element of desertion on the part of the respondent.

7. At the same time, the element of cruelty alleged by the appellant was of date prior to the settlement reached between the parties in September/October, 1994. After the settlement was reached, the parties hardly cohabited as may have given rise to any ground of cruelty on part of the respondent. As to the acts of cruelty alleged prior to 1992, those have to be treated to have been specifically condoned or given up by the appellant upon his entering into a written settlement with the respondent to revive their matrimonial relationship.

8. Thus, the appellant has miserably failed in establishing any

allegation of cruelty or desertion.

10. As to the submission of learned counsel for the appellant based on recent decision of the Supreme Court in **Prakashchandra Joshi Vs. Kuntal Prakashchandra Joshi @ Kuntal Visanji Shah, Civil Appeal No. NIL of 2024, arising from SLP(C) No. 21139 of 2021** decided on 24.01.2024, we are unable to dissolve the marriage between the parties on the strength of that decision as it can never be doubted that the said order has been passed by the Supreme Court in exercise of its unique power under Article 142 of the Constitution of India. There can be no doubt that such a power does not exist to be exercised by this Court. At present, we remain an Appeal Court in terms of Section 19 of the Family Court Act, 1984. Even the extraordinary jurisdiction of the Court under Article 226 of the Constitution of India may not be exercised in such matters.

11. Consequently, the appeal lacks merit and is, accordingly, dismissed.

Order Date :- 3.9.2024

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