

Court No. - 39

Case :- FIRST APPEAL No. - 153 of 2016

Appellant :-

Respondent

Counsel for Appellant :- Ajay Kumar Singh, Anurag Pathak

Counsel for Respondent :- Kamlesh Kumar Singh

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Shri Anurag Pathak, learned counsel for the appellant and perused the record.

2. The present first appeal has been filed under Section 19 of the Family Courts Act, 1984 arising from the judgment and order dated 08.03.2016 passed by the Principal Judge, Family Court, Varanasi, in Marriage Petition No.422 of 2011 (

). By that order, learned court below has rejected the divorce petition filed by the present appellant under Section 13 of the Hindu Marriage Act, 1955.

3. Submission of the learned counsel for the appellant is, the appellant had proved the fact of the repeated cruelty committed by the respondent by not allowing the appellant to visit his parental home; by offering abusive and aggressive behaviour on every occasion; by not informing the appellant of the death of his mother; by assaulting the appellant at cremation Ghat, during cremation of the mortal remains of his mother and also through other means. Thus, it has been submitted that the respondent had consciously and continuously caused such cruelty to the appellant as may be impossible for him to live in a happy or normal matrimonial relationship, with her.

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4. Second, it has been submitted, besides such conduct offered by the respondent, in any case, marriage between the parties has broken down irretrievably. Thus, the parties have been living separately since 1999. Twenty five years have passed since then. There is no hope of revival of the matrimonial relationship between the parties. The matrimonial relationship between the parties is only a legal tie and there is no real substance in the same. In that regard, heavy reliance has been placed on the decision of the Supreme Court in the cases of **Naveen Kohli Vs. Neelu Kohli, 2006 4 SCC 558, Sukhendu Das Vs Rita Mukherjee (2017) 9 SCC 632, K. Srinivas Rao Vs. D.A. Deepa (2013) 5 SCC 226** and decision of the single judge of this Court in **Bhavna Sharma Vs. Sanjeev Sharma, First Appeal No.51 of 2021** decided on 31.07.2019.

5. Undisputed facts of the case are that the parties were married in 1999. During the proceeding before learned court below, the appellant could not recall the exact date of his marriage. However, it is stated to be 29.04.1999. Two children were born to that marriage who would be about 20 and 23 years of age. During the initial years of their marriage, the parties resided with the parents of the present appellant at Varanasi. However, his father who was in service with the electricity distribution corporation died in harness in 1998. Arising from that, the appellant claimed and was granted compassionate appointment, at Mirzapur. At that stage, the appellant left his parental home at Varanasi and started residing at Mirzapur. The respondent continued to live with the widowed mother of the appellant till latter's death. It is the appellant's case, the respondent took such care of his mother and formed such relationship with her that the appellant's mother executed a Will in favour of the respondent.

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6. In the context of the above noted facts brought before the Court by none other than the appellant, it is alleged that the respondent offered cruel behaviour towards the appellant and that she hurled verbal abuses at him and that she and her close family members physically assaulted the appellant. It is also alleged that the appellant was not informed on the death of his mother and thus he was prevented from performing the last rites. Though such facts have been pleaded and parroted (if we may say) in the oral statement of the present appellant recorded before the learned court below, the same may never be acted upon inasmuch as other than generic and vague description of such occurrence no specific date, time or place of such occurrence was ever disclosed by the appellant. Wholly bald, unsubstantiated and self-serving allegations were made by the appellant. Those may never have been tested through any process of rational cross examination. Unless the appellant had specified the date, place and time etc. of the occurrence and unless the appellant had specified the role played by any individual in such occurrence, such statements were rightly not acted upon by the learned court below.

7. It is equally true, there is no independent credible material to establish any of the occurrences described by the appellant, even if such vague and generic description of the occurrence were to be considered, with any seriousness. No independent witness and no documentary evidence was led by the appellant to establish any element of cruelty that too of degree that may persuade the Court to dissolve the marriage between the parties.

8. Learned court below has not erred in disbelieving the case of the appellant on the strength of evidence available before it. The marriage between the parties was not troubled from beginning inasmuch as they not only cohabited till 1998-99 that is till death

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of the appellant's father but that two children were born to them during that period. Then the learned court below has not also erred in giving weightage to the fact that the respondent did not desert the appellant but that the appellant had to leave his parental home for reason of job taken by him by way of compassionate appointment, after death of his father. Learned court below has also not erred in giving due weightage to the fact that after that occurrence, the respondent continued to reside with the appellant's mother and took care of her.

9. It is on record that there was no complaint made by mother of the appellant against the respondent. Rather, according to the appellant, his mother executed a Will in favour of the respondent. That demonstrates the nature of relationship formed by the respondent with the family of the appellant arising from her marriage. That relationship having survived, the occurrence of the appellant having moved to Mirzapur and having stayed there for long years, cannot be cited to claim that the marriage between the parties has irretrievably broken down for reason of long separation suffered on account of job taken by the appellant accompanied with the fact that his spouse was required to or continued to take care of the mother of the appellant.

10. The other occurrence of verbal abuses hurled and physical assault committed were also only vague and general and without any specification of date, time and occurrence. No evidence exists to believe that such occurrence ever took place.

11. For reasons noted above, the law cited by learned counsel for the appellant is found to be distinguishable. The decisions of the Supreme Court do not lay down a rule of thumb that the marriage may be presumed to be irretrievably broken down if the parties

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have suffered separation for any length of time. Only where one of the parties is seen to have voluntarily deserted the other and parties have continued in that status for long period of time then in view of the other attending circumstances as may indicate to the Court that there is no substance in the marriage, a conclusion may be reached that the marriage has been irretrievably broken down. Troubled as the marriage may have been and ordinary a relationship between the spouses may remain, it is not for the Court to reach a positive conclusion that personal relationship between the parties has irretrievably broken down solely for reason of length of separation suffered.

12. In the present case, in absence of the ancillary or attending circumstances shown to establish that the marriage between the parties has irretrievably broken down and in face of the other material and attending circumstances to establish that the respondent remained devoted to the marriage to the extent she continued to take care of the appellant's aged mother even after the appellant had gone out for reason of job taken by him in another district, clearly shows that the marriage has not irretrievably broken down, then faith and hope in the marriage has survived.

13. Accordingly, the present appeal lacks merit and is dismissed.

Order Date :- 3.7.2024

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