

Court No. - 39**Case :-** FIRST APPEAL No. - 808 of 2003**Appellant :-****Respondent****Counsel for Appellant :-** V.C. Katiyar, Krishna Datta

Tiwari, Rameshwar Singh Kushwaha, Rohit Sharan Tomar, Virendra Kumar Singh

Counsel for Respondent :- A.D. Prabhakar, Mohit Bihari Mathur**Hon'ble Saumitra Dayal Singh, J.****Hon'ble Donadi Ramesh, J.**

1. Heard Sri J.S. Tomar, holding brief of Sri R.S. Tomar, learned counsel for the appellant.

2. List revised. None appears for the respondent, in either call.

3. Present appeal has been filed under Section 96 CPC read with Section 29 of the Hindu Marriage Act arising from judgment and order dated 20.12.1986 passed by District Judge, Rampur in Original Suit No. 31 of 1986, whereby the learned Court below has dissolved the marriage between the parties. Learned Court below has recorded a clear finding that earlier the respondent had instituted Suit No. 6 of 1984 () seeking restitution of conjugal rights. The same was decreed, though *ex parte*, on 18.9.1984. Despite expiry of one year, the appellant did not agree to cohabitation. Thus, the matrimonial relationship between the parties remained broken for more than the statutory period of one year, after the grant of decree of restitution of conjugal rights. Learned Court below has disbelieved the oral evidence led by the appellant after taking note of the inconsistencies in the defendant's evidence. According to the appellant, she had cohabited with the respondent during Diwali of

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the year 1984. In proof thereof, she relied on Rs. 5000/- given to the respondent on Diwali in the year 1984. At the same time, the father of the appellant namely, DW-2 contradicted that statement. According to him, that amount of Rs. 5000/- was given to the respondent in the month of July, 1984 i.e. before the grant of decree of restitution of conjugal rights on 18.9.1984. Even as to the occurrence of the Panchayat, the oral evidence led by the appellant was found contradicted with that led by her father/DW-2.

4. Then, the learned counsel for the appellant has taken note of the fact that an independent witness PW-2 had also supported the case set-up by the respondent of continued desertion after grant of decree of restitution of conjugal rights to the respondent.

5. In face of such evidence appreciated by the learned Court below and in absence of any evidence shown to exist to contradict or doubt the correctness of the finding recorded by the learned Court below, we find no good ground to disturb the findings recorded by the learned Court below.

6. Section 13 (1A) (i) of the Hindu Marriage Act leaves no matter of doubt that a party, who may have been awarded decree of restitution of conjugal rights, may claim divorce if that decree is not given effect to or abided by their spouse. Thus, upon failure of cohabitation for a period of one year after grant of decree of restitution of conjugal rights, the respondent was entitled to dissolution of the marriage.

7. Once, it was found by the learned Court below that cohabitation between the parties was not revived for more than one year from 18.9.1984, the respondent did become entitled to claim dissolution

of marriage.

8. We are also mindful of the fact that the parties were married in the year 1979. The decree for restitution of conjugal rights was passed on 18.9.1984. The parties have been living separately i.e. for a long period of 40 years since then. At present both would be more than 60 years of age.

9. In view of the above fact also we find no good ground to interfere with the judgment and order of the Court below to the extent it has dissolved the marriage between the parties.

10. However, we find that the learned Court below has not made any provision for award of permanent alimony. In that regard, learned counsel for the appellant has referred to supplementary and other affidavits filed to indicate that the respondent is a man of means, whereas the appellant remained a homemaker with no known source of income. Keeping in mind the age of the parties and facts disclosed in the supplementary affidavits, permanent alimony of Rs. 10 Lacs is awarded to the appellant. Thus, the marriage between the parties is dissolved, subject to payment of Rs. 10 Lacs by way of permanent alimony within a period of three months from today.

11. The appeal is **partly allowed**.

Order Date :- 30.7.2024

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