

(2005) 09 P&H CK 0050

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 658 of 1997

Nasib Kaur

APPELLANT

Vs

Jarnail Singh

RESPONDENT

Date of Decision: Sept. 9, 2005

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13(1A), 23(1), 9

Citation: (2006) 142 PLR 170

Hon'ble Judges: Viney Mittal, J; H.S. Bedi, J

Bench: Division Bench

Advocate: Vikas Singh, for the Appellant;

Final Decision: Dismissed

Judgement

Viney Mittal, J.

The present appellant, Nasib Kaur, has impugned the judgment dated April 24, 1997 passed by the learned Single Judge, whereby the appeal filed against the judgment dated November 2, 1987 passed by the learned Additional District Judge, Faridkot, was dismissed. Learned trial Court vide judgment dated November 2, 1987 had dissolved the marriage between the appellant and the respondent, Jarnail Singh. The aforesaid decree of divorce was upheld by the learned Single Judge.

2. The marriage between the parties was solemnised about 41 years back in village Bagha Purana, Tehsil Moga District Faridkot...Nasib Kaur filed a petition u/s 9 of the Hindu Marriage Act (hereinafter referred to as the "Act") on January 12, 1984. The said petition was decreed on January 8, 1986 and a decree for restitution of conjugal rights was passed. After the expiry of one year and the aforesaid decree having remained unsuccessful and there was being no resumption of cohabitation between the parties, the respondent had filed a petition for dissolution of marriage by a decree of divorce u/s 13(1-A)(ii) of the Act. It was claimed that since there was no resumption of cohabitation between the parties for a period of one year after the

passing of decree for restitution of conjugal rights, he was entitled to seek dissolution of marriage between the parties. The said petition was contested by the wife but was allowed by the learned trial Court. The marriage between the parties was dissolved.

3. The decree of divorce was upheld by the learned Single Judge in appeal also.

4. We have heard Shri Vikas Singh, learned Counsel appearing for the appellant and have gone through the record of the case.

5. Learned Counsel for the appellant has argued that after the passing of the decree for restitution of conjugal rights, the appellant-wife, had sought execution thereof. The said execution proceedings had remained unsatisfied. On that basis, learned Counsel has argued that the respondent-husband could not be permitted to take advantage of his own wrongs and, therefore, u/s 23(1)(a) of the Act, the petition decree of divorce filed by the husband was not maintainable. Additionally, it has been argued by the learned Counsel that the decree of restitution of conjugal rights was passed on January 8, 1986. The divorce petition was filed on January 8, 1987, that is when the period of one year had not elapsed and, therefore, also the divorce petition filed by the husband was not maintainable.

6. We have duly considered the contentions raised by the learned Counsel for the appellant but find ourselves unable to agree with the same.

7. So far as first contention of learned Counsel for the appellant is concerned, the controversy is fully concluded by a Full Bench judgment of this Court in [Smt. Bimla Devi Vs. Singh Raj](#), . It has been held by the Full Bench that the provisions of Section 23(1)(a) of the Act cannot be invoked to restrict the relief u/s 13(1-A)(ii) of the Act on the ground of non-compliance of a decree of restitution of conjugal rights where there has not been restitution of conjugal rights for a period of one year or above. In view of the law laid down by the Full Bench in Bimla Devi's case, the first ground raised by the learned Counsel for the appellant has no merit.

8. With regard to non-maintainability of the petition on the ground that the period of one year had not expired, it is apparent that the decree of restitution of conjugal rights was passed on January 8, 1986 whereas the petition for divorce has been filed on January 8, 1987. It is, thus apparent that the petition filed on the aforesaid date was maintainable having been fled after one year.

9. Before parting with the order, we may also notice that the parties have been living separately since January, 1984. There is no resumption of cohabitation between the parties. A decree of restitution of conjugal rights was passed on January 8, 1986. The marriage between the parties was dissolved by a decree of divorce by the trial Court on November 2, 1987. In these circumstances, it is apparent that no interference by this Court is required on the facts and circumstances of the case also.

10. Accordingly, we do not find any merit in the present petition and the same is dismissed.