

(1984) 07 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal From Order No. 195-M of 1983

Mohan Lal

APPELLANT

Vs

Kalp Shikha

RESPONDENT

Date of Decision: July 31, 1984

Acts Referred:

- Hindu Marriage Act, 1955 - Section 9

Hon'ble Judges: Sukhdev Singh Kang, J

Bench: Single Bench

Advocate: Ashok Bhan and Mr. A.K. Mittal, for the Appellant; M.S. Liberhan, for the Respondent

Final Decision: Allowed

Judgement

Sukhdev Singh Kang, J.

Mohan Lal filed a petition u/s 9 of the Hindu Marriage Act, 1955 (for short, "the Act") for restitution of conjugal rights, on the plea that Smt. Kalp Shikha, his wife, had left the matrimonial home on 10th May, 1982, without his consent and without any sufficient cause and has not come back despite his best efforts. The Respondent-wife appeared and resisted the petition. During the course of trial, she filed an application that the petition should be dismissed, because Section 9 of the Act had been declared ultra vires the Constitution by the Andhra Pradesh High Court in *T Sareetha v. T. Venkata Subbaiah*. This plea prevailed with the learned trial Judge and (in his order dated 19th November, 1982) he dismissed the petition u/s 9 of the Act, on the ground that Section 9 had already been struck down and the petition was not competent.

2. A learned Single Judge of the Andhra Pradesh High Court in *T. Sareetha's* case (supra) held that the remedy of restitution of conjugal rights provided for by Section 9 is a savage and barbarous remedy violating the right to privacy and human dignity guaranteed under Article 21 of the Constitution and Section 9 of the Act which

provides for a decree of restitution of conjugal rights" was unconstitutional. The learned Judge gave detailed reasons in support of these conclusions.

3. The issue of constitutional validity of Section 9 was raised before the Delhi High Court in [Harvinder Kaur Vs. Harmander Singh Choudhry](#), Avadh Behari Rohtagi, J. considered the judgment in T. Sareetha's case (supra) and came to the conclusion that it did not lay down the correct law. The learned Judge, if I may so with respect, has dealt with the subject in a very elaborate and illuminating manner. He has considered all the arguments in favour of the plea that Section 9 of the Act was unconstitutional per the conclusions of P.A. Choudhary, J. in Sareetha's case (supra), and has given very lucid and valid reasons for not accepting them. After analysing the statute, the case law and the constitutional jurisprudence having a bearing upon the subject, he has concluded that Section 9 of the Act is not unconstitutional.

4. I have perused the two judgments with the help of the Learned Counsel for the parties and regret my inability to concur in the view taken by P.A. Choudhary, J. in T. Sareetha's case (supra). I am in respectful agreement with the ratio of the judgment in Smt. Harvinder Kaur's case (supra).

5. For the reasons recorded in Smt. Harvinder Kaur's case (supra) I hold that Section 9 of the Act is not unconstitutional. In this view of the matter, the order of the learned trial Judge cannot be sustained. The appeal is allowed, and the case is remanded to the learned trial Judge for trial and decision. The parties through their respective Learned Counsel are directed to appear in the trial Court on 3rd September, 1984. There shall be no order as to costs.