

## Kiran Bala alias Swarn Kanta Vs Sharan Kumar

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 3, 2001

**Acts Referred:** Hindu Marriage Act, 1955 " Section 9

**Citation:** (2002) 2 DMC 564

**Hon'ble Judges:** A.K. Goel, J

**Bench:** Single Bench

**Advocate:** P.K. Gupta, for the Appellant; Kiran Bala Jain, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

A.K. Goel, J.

This appeal has been preferred against the judgment and decree dated 13.12.1996 rendered by the Additional District Judge, Ambala, granting decree of restitution of conjugal rights in favour of the respondent.

2. Marriage took place between the parties on 4.3.1979 and three issues were born out of the wedlock. The husband filed the petition for

restitution of conjugal rights alleging, inter alia, that the wife refused to live with the husband. The wife contested the petition stating, inter alia, that

the husband was living with the widow of his brother.

3. The trial Court after appreciating evidence on record held that the wife had withdrawn from the society of the husband without sufficient cause.

4. The matter was referred to the Lok Adalat which vide its proceedings dated 10.5.1999 sent back the matter to the High Court for decision on

merits as there was no possibility of a compromise.

5. Counsel for the appellant has pointed out that the husband was living with his brother's widow which was sufficient cause for the wife to live

separately. The trial Court in para 12 of its judgment observed that none of the facts stated by the wife were pleaded by her in her written

statement. Counsel for the appellant has drawn my attention to the written statement filed by the wife wherein it is specifically stated at the end of

para No. 3 that the husband was living with the widow of his brother Arun Kumar since his death. The finding of the lower court is based on a

misreading of the evidence.

6. Ms. Kiran Bala Jain, learned counsel for the husband has supported the impugned judgment. She submitted that the burden of having sufficient

cause for withdrawing from husband's company was on the wife which she was not able to discharge. She submits that allegations of the wife were

baseless and could not be accepted. She relied on finding of the trial Court, particularly para 11.

7. Having heard learned counsel for the parties and perused the record, I am unable to approve the finding of the trial Court. The trial Court erred

in observing that wife had not pleaded her version. I find that the same has been duly pleaded in the written statement. The wife has shown

sufficient cause for living separately.

8. I, therefore, set aside the finding of the trial Court and hold that the wife had proved sufficient cause for living separately and the husband was

not entitled for a decree of restitution of conjugal rights.

9. Accordingly, this appeal is allowed, decree granted by the trial Court is set aside and the petition for restitution of conjugal rights filed by the

husband is dismissed.