

(2001) 08 P&H CK 0205

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal From Order No. 19-M of 1997

Kiran Bala alias Swarn Kanta

APPELLANT

Vs

Sharan Kumar

RESPONDENT

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 The trial Court after appreciating evidence on record held that the wife had withdrawn from the society of the husband without sufficient cause.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