(2007) 05 JH CK 0012

Jharkhand High Court

Case No: L.P.A. No. 52 of 1992 (R)

Vijay Kumar Verma	APPELLANT
Vs	
Madhuri Verma @ Puspa Verma	RESPONDENT

Date of Decision: May 4, 2007

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13
- Penal Code, 1860 (IPC) - Section 302, 324, 34, 434, 498A

Citation: AIR 2007 Jhar 104 : (2007) 2 BLJR 1802 : (2007) 3 JCR 4

Hon'ble Judges: R.K. Prasad, J; M.Y. Eqbal, J

Bench: Division Bench

Advocate: V. Shivnath and Bimal Kumar, for the Appellant; R.R. Tiwary, for the Respondent

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

This appeal under Clause 10 of the Letters Patent is directed against the judgment and order dated 21.4.1992 passed in First Appeal No. 89 of 1987 (R) whereby the learned Single Judge set aside the judgment and decree dated 30.9.1986 passed by the 4th Addl. Judicial Commissioner, Ranchi in Matrimonial Suit No. 12 of 1986.

2. The facts of the case lie in a narrow compass:

The plaintiff-appellant filed aforementioned Matrimonial Suit No. 12 of 1986 against the respondent-wife u/s 13 of the Hindu Marriage Act for a decree of divorce. The plaintiff''s case was that he and the respondent was married at Gay in May, 1984 according to Hindu rites and customs. After the marriage, the respondent came to Ranchi at her husband''s place and stayed there for some days and went back to her father''s place. In 1985, a child was born at Gaya. Respondent again came to her husband''s place in 1985 and left for Gaya in 1986. Since then she is residing at Gaya and another child was born in 1986. The plaintiff''s case was that the respondent has

been suffering intermittingly from mental disorder and it was not reasonable to live with the respondent. Various other allegations were made by the plaintiff-appellant. The defendant-respondent appeared in the suit through lawyer and obtained adjournment for filing written statement, but no written statement was filed and, thereafter, the suit was fixed for ex parte hearing. Consequently, the suit was finally decreed exparte on 30.9.1986.

3. The respondent-wife preferred appeal against the impugned ex parte decree being First Appeal No. 89 of 1987. The appeal was finally heard by the learned Single Judge who in terms of judgment and order dated 21st April, 1992 allowed the appeal and set aside the decree of divorce. The case was remanded back for fresh trial. Against the aforesaid judgment passed by the learned Single Judge, the instant Letters Patent Appeal has been filed.

4. During the pendency of the instant appeal, on 15.3.2007 a supplementary affidavit was filed by the appellant stating inter alia that he has been residing separately with the respondent since 1986 and there is no possibility of the appellant and the respondent resuming marital life since there has been an irretrievable break down of the marriage between the appellant and the respondent. The appellant further stated that he is ready to pay Rs. 4 lacs to the respondent towards her permanent alimony. It is further stated that both the son and daughter have become major and the appellant undertakes to bear all educational/career building expenditure of both the children. By another supplementary affidavit dated 19.3.2007, the appellant stated that the respondent is gainfully employed as an Assistant Teacher at DAV Public School, Piska More, Ranchi and earning salary from her service. On the other hand, the respondent filed supplementary affidavit on 20.3.2007 stating that she is willing and ready to live with the appellant in order to maintain their conjugal relationship.

5. Again on 28.3.2007, the appellant filed an affidavit stating, inter alia, that after the respondent left Ranchi in 1986, she lodged FIR under Sections 498A, 434, 324 of the Indian Penal code and under the sections of Dowry Prohibition Act which were dismissed. The respondent, thereafter, filed Complaint Case No. 234 of 1988 which was also dismissed by judgment dated 28.8.1989 by the Chief Judicial Magistrate, Ranchi. The respondent, thereafter, filed a Criminal Revision No. 100 of 1989 against the order dated 28.8.1989 in Complaint case No. 234 of 1988 and the said revision was also dismissed by the Additional Judicial Commissioner, Ranchi on 15.1.1993. The petitioner, thereafter, moved Patna High Court in Cr. Misc. No. 1009 of 1992 which was also dismissed as not pressed. The appellant further stated in the affidavit that the respondent lodged another case u/s 498A I.P.C. and 3/4 of the Dowry Prohibition Act which was registered as Case No. 4423 of 1992. However, in the aforesaid case, the appellant was acquitted in terms of judgment dated 24.1.1997 passed by the Judicial Magistrate, 1st Class, Ranchi. In the said case, the respondent implicated the father, brother, mother and sister of the appellant. It is

further stated that the respondent again filed false complaint ease against the appellant before the Director General of Police, Jharkhand whereby FIR was registered u/s 498A Indian Penal Code, 1860 - Section 302/34 vide Sukhdeonagar PS Case No. 442 of 2004. It is further contended by the appellant that the respondent always tried to send the appellant and his family members to jail on frivolous allegations.

6. This matter was taken up for hearing on 15.3.2007 and this Court passed the following orders:

The supplementary affidavit has been field by the appellant stating inter alia that both the appellant and the respondent have been residing separately since February, 1986 and there is no possibility of their resuming marital life. The appellant further stated that he is ready to pay Rs. 4 lacs in lump sum to the respondent towards payment of maintenance in the event the marriage is dissolved by a decree of divorce.

Mrs. I. Sen Choudhary, learned Counsel appearing for the respondent, has not disputed the fact that both the parties are living separately since 1986. Learned Counsel further submitted that there is no chance of reconciliation between the parties.

In order to satisfy ourselves, we direct both the appellant and the respondent to appear before this Court on 19th March, 2007. The respondent shall also file affidavit and express her desire whether she will live with the appellant or she wants dissolution of marriage.

7. On 20.3.2007, the matter was taken up and both the appellant and the respondent appeared in person. Although the appellant submitted before this Court that he is ready to pay a lump sum amount of Rs. 4 lacs by way of permanent alimony and shall also meet all the educational expenses that may be incurred for both the children, but the respondent insisted that she is not ready for the dissolution of the marriage and she wants to live with the appellant. Consequently, the appeal was heard on merit.

8. As noticed above, ex parte decree of divorce was passed on 30.9.1986. Against the said decree, the respondent preferred First Appeal No. 89 of 1987. In the meantime, the appellant remarried with another lady, namely, Radha Devi, on 21.6.1988. This fact of remarriage was well within the knowledge of the respondent. It has been informed that out of the second marriage, children were born and the appellant has been residing with the second wife since 1988. The learned Single Judge has noticed all these facts in the impugned judgment, but no view has been expressed with regard to the validity of the second marriage.

9. Be that as it may, the admitted facts are that the appellant and the respondent have been living separately since 1986 i.e. more than 21 years. The appellant has

been residing with the second wife since 1988 along with the children born out of the said wedlock. In the aforesaid circumstances, the question that fails for consideration is as to whether it would fit and proper to affirm the decree of divorce passed by the trial Court or to pass any appropriate order for the ends of justice. In this connection, first of all I would like to refer the law laid down by the Supreme Court in similar facts and Circumstances.

10. In the case of Praveen Mehta Vs. Inderjit Mehta, , the facts of the case was that the marriage was solemnized in the year 1985 according to Hindu rites and customs. The couple lived together till April, 1986 and then parted company permanently. The marriage was never consummated due to lack of cooperation. Soon after the marriage took place, the husband alleged to have learnt that his wife is suffering from some illness and disease. In 1996, the appellant filed a petition for divorce on the ground of cruelty and desertion. The trial Court dismissed the petition. The High Court, however, allowed the appeal filed by the husband on the ground of cruelty. The Letters Patent Appeal filed by the wife was dismissed. Then the matter came to the Supreme Court. Their Lordships, besides deciding other issues, observed as under:

24. As noted earlier, the parties were married on 6-12-1985. They stayed together for a short period till 28-4-1986 when they parted company. Despite several attempts by relatives and well-wishers no conciliation between them was possible. The petition for the dissolution of the marriage was filed in the year 1996. In the meantime so many years have elapsed since the spouses parted company. In these circumstances it can be reasonably inferred that the marriage between the parties has broken down irretrievably without any fault on the part of the respondent. Further, the respondent has remarried in the year 2000. On this ground also the decision of the High Court in favour of the respondent''s prayer for dissolution of the marriage should not be disturbed. Accordingly this appeal fails and is dismissed. There will, however, be no order for costs.

11. In similar circumstance, the Apex Court in the case of Durga Prasanna Tripathy Vs. Arundhati Tripathy, held as under:

21. In our view that 14 years have elapsed since the appellant and the respondent have been separated and there is no possibility of the appellant and the respondent resuming the normal marital life even though the respondent is willing to join her husband. There has been an irretrievable breakdown of marriage between the appellant and the respondent. The respondent has also preferred to keep silent about her absence during the death of her father-in-law and during the marriage ceremony of her brother-in-law. The complaint before the Mahila Commission does not implicate the appellant for dowry harassment though the respondent in her evidence before the Family Court has alleged dowry harassment by the appellant. It is pertinent to mention here that a complaint before the Mahila Commission was lodged after 7 years of the marriage alleging torture for dowry by the mother-in-law

and brother-in-law during the initial years of marriage. The said complaint was filed in 1998 that is only after notice was issued by the family Court on 27-3-1997 on the application filed by the appellant u/s 13 of the Hindu Marriage Act. The Family Court, on examination of the evidence on record, and having observed the demeanour of the witnesses concluded that the appellant had proved that the respondent is not only cruel but also deserted him for more than 7 years. The desertion as on date is more than 14 years and, therefore, in our view there has been an irretrievable breakdown of marriage between the appellant and the respondent. Even the Conciliation Officer before the Family Court gave its report that the respondent was willing to live with the appellant on the condition that they lived separately from his family. The respondent in her evidence had not disputed the fact that attempts have been made by the appellant and his family to bring her back to the matrimonial home for leading a conjugal life with the appellant. Apart from that, relationship between the appellant and the respondent have become strained over years due to the desertion of the appellant by the respondent for several years. Under the circumstances, the appellant had proved before the Family Court both the factum of separation as well as animus deserendi which are the essential elements of desertion. The evidence adduced by the respondent before the Family Court belies her stand taken by her before the Family Court. Enough instances of cruelty meted out by the respondent to the appellant were cited before the Family Court and the Family Court being convinced granted the decree of divorce. The harassment by the in-laws of the respondent was an afterthought since the same was alleged after a gap of 7 years of marriage and desertion by the respondent. The appellant having failed in his efforts to get back the respondent to her matrimonial home and having faced the trauma of performing the last rites of his deceased father without the respondent and having faced the ill-treatment meted out by the respondent to him and his family had, in our opinion, no other efficacious remedy but to approach the Family Court for decree of divorce.
Their Lordships further observed:

28. The facts and circumstances in the above three cases disclose that reunion is impossible. The case on hand is one such. It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned Counsel at the time of hearing appears to be impractical. It is also a matter of record that dislike for each other was burning hot.

29. Before parting with this case, we think it necessary to say the following:

12. In similar circumstance, the Supreme Court in the case of Rishikesh Sharma Vs. Saroj Sharma, observed as under:

4. We have heard Mr. A.K. Chitale, learned Senior Counsel and Mr. S.S. Dahiya, learned Counsel for the respondent and perused the judgment passed by both the trial court and also of the High Court. It is not in dispute that the respondent is living separately from the year 1981. Though the finding has been rendered by the High Court that the wife last resided with her husband up to 25.3.1989, the said finding according to the learned Counsel for the appellant is not correct. In view of the several litigations between the parties it is not possible for her to prosecute criminal case against the husband and at the same time continue to reside with her husband. In the instant case the marriage is irretrievably broken down with no possibility of the parties living together again. Both the parties have crossed 49 years and living separately and working independently since 1981. There being a history of litigation with the respondent wife repeatedly filing criminal cases against the appellant which could not be substantiated as found by the court. This apart, only child born in the wedlock in 1975 has already been given in marriage. Under such circumstances the High Court was not justified in refusing to exercise its jurisdiction in favour of the appellant. This apart, the wife also has made certain allegations against her husband that the husband has already remarried and is living with another lady as stated by her in the written statement. The High Court also has not considered the allegations made by the respondent which have been repeatedly made and repeatedly found baseless by the courts.
5. In our opinion it will not be possible for the parties to live together and therefore there is no purpose in compelling both the parties to live together. Therefore, the best course in our opinion is to dissolve the marriage by passing a decree of divorce so that the parties who are litigating since 1981 and have lost valuable part of the life can live peacefully for remaining part of their life.

6. During the last hearing both the husband and wife were present in the Court. The husband was ready and willing to pay a lump sum amount by way of permanent alimony to the wife. The wife was not willing to accept the lump sum amount but however expressed her willingness to live with her husband. We are of the opinion that her desire to live with her husband at this stage and at this distance of time is not genuine. Therefore, we are not accepting this suggestion made by the wife and reject the same.

13. Considering the facts and circumstances of the instant case and the law laid down by the Supreme Court, we are of the view that since marriage between the parties has broken down irretrievably and the parties have been living separately since 1986 and also having regard to the fact that appellant has remarried in 1988, it is fit and proper to dissolve the marriage but at the same time some conditions must be imposed upon the appellant.

14. For the reasons aforesaid, this appeal is allowed and the impugned judgment passed by the learned Single Judge is set aside. Consequently, marriage between the appellant and the respondent is dissolved. However, appellant shall comply the

following directions:

(1) Appellant shall pay a sum of Rs. 5 lacs towards permanent alimony to the respondent within four weeks from today.

(2) Appellant shall also meet all the educational expenses for the children and shall also make provisions for payment of Rs. 3 lacs towards marriage expenses of his daughter as and when marriage is solemnized.

15. In the facts of the case, there shall be no order as to costs.