
(2014) 07 JH CK 0075

Jharkhand High Court

Case No: F.A. No. 48 of 2006

Sujit Kumar Pandey

APPELLANT

Vs

Anjali Devi

RESPONDENT

Date of Decision: July 22, 2014

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13, 25

Citation: (2015) 1 DMC 850 : (2014) 3 LJLR 532

Hon'ble Judges: R. Banumathi, C.J; Amitav Kumar Gupta, J

Bench: Division Bench

Advocate: Rajeeva Sharma, Sr. Advocate and Rita Kumari, Advocate for the Appellant; L.K. Lal, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Amitav Kumar Gupta, J.

The instant appeal has been preferred against the judgment dated 09.08.2005 passed by Principal Judge, Family Court, Dumka in Matrimonial (Divorce) Suit No. 12 of 2001/146 of 2003 whereby the learned Principal Judge dismissed the petition filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 for dissolution of the marriage and decree of divorce to the petitioner-appellant.

2. The case of the petitioner-appellant's is that the marriage was solemnised with the O.P. respondent, Anjali Devi on 04.12.1997. After the marriage the appellant-husband and the respondent-wife used to reside at Deoghar where the appellant found his wife dull, depressed and abnormal. The appellant asked the respondent to go to for honeymoon to Bangalore upon which she expressed her unwillingness but on his persuasion she accompanied him to Bangalore. At Bangalore he found that the respondent was behaving in abnormal manner and on query she told him that she was suffering from mental abnormality and was under treatment of Dr. B.K. Singh, Patna since 1989 whereafter the appellant took her to

National Institute of Mental Health and Neuro Science (NIMHANS) where the doctor opined that she was suffering from chronic mental abnormality. It is alleged that when the appellant demanded the past medical reports regarding her treatment, the respondent stated that it was lying with her father. The doctor at Bangalore prescribed some medicines and asked the appellant to take her back and get her treatment done by the doctor under whom she was treating. The appellant complained to his father-in-law about the suppression of the mental abnormality and showed him the prescription of NIMHANS. On repeated request for furnishing the medical papers relating to the treatment of the respondent the same was not furnished to him. Despite this, the appellant took the respondent to Durgapur where he was posted as Sub-Inspector Railway Protection Force, but the respondent's abnormal behavior persisted and she insisted that she be taken to Dumka. That she used to create ugly scenes in presence of the staff and officers and also on several occasions she made mad attack on the appellant. That the respondent used to run away from the matrimonial house and the appellant with great difficulty used to bring her and she used to threaten to commit suicide. Considering her unbearable abnormal conduct and behavior and the appellant brought her to her parental house at Dumka. It is averred that the respondents and her family have treated the appellant with cruelty and were threatening to implicate him and his family members in a false case.

On the said facts the suit was filed to declare the marriage as nullity as there was suppression of material facts regarding the mental abnormality of the respondent. The suit was contested by the respondent-wife who denied the allegation and stated that the appellant-husband wanted her to allow him to marry another woman, with whom he was having an affair, to which she was not agreeable. Thus being aggrieved the appellant had brought and left her at her parental house since 1999 though she was willing to lead a happy married life with the appellant.

3. On considering the evidence the suit was dismissed by the impugned judgment. Being aggrieved by the dismissals of his Matrimonial (Divorce) Suit the appellant/husband has preferred this appeal.

4. In course of hearing of the appeal, the counsel for the appellant has submitted that considering the fact that the appellant and the respondent have been residing separately for more than a decade and there is no chance of rapprochement, the marriage may be dissolved with consent.

5. The appellant is present alongwith his learned counsel. The respondent/wife was also present in the Court along with her counsel. The prayer for dissolution of marriage by the appellant has not been controverted or objected to by the respondent. An affidavit to this effect has been filed by the respondent averring that in the given facts marriage be dissolved, however, the respondent is entitled to permanent alimony for maintenance under Section 25 of the Hindu Marriage Act, 1955 so as to meet the expenses of her daily life and lead her life in comfort and

with respectability.

6. Thus in the factual scenario, taking into account that appellant and respondent have been residing separately for over a decade and taking into consideration the affidavit filed by the respondent and that there is no chance of rapprochement between them, the marriage is dissolved. Accordingly, the judgment and decree passed by the Family Court, Dumka is hereby set aside.

7. Now the only issue for adjudication is regarding the quantum of alimony to be paid to the appellant.

8. In this context, learned counsel for the appellant has filed supplementary affidavit giving the details of the salary statement of the appellant since September, 1989. It is submitted that the appellant has only ten years of service left and he is to superannuate on 31.07.2024. It is stated that the appellant requires Rs. 5,000/- for his personal expenses and spends Rs. 1,500/- for the treatment of his ailing brother, Himanshu Pandey and he has to pay Rs. 3,000/- p.m. for education of the two daughters of Himanshu Pandey; that appellant's mother is suffering from various illness and she was also operated upon for breast cancer and the appellant has to pay Rs. 5000/- p.m. for her medicines; that appellant's father is a patient of high blood-pressure and suffering from heart and respiratory diseases and Rs. 3,000/- is incurred for the medicines of his father.

9. Learned counsel for the respondent submitted that it is evident that attempts were made for reconciliation in course of hearing of the appeal which was unsuccessful whereafter parties agreed to amicably settle their dispute amongst themselves but no consensus was arrived at between the parties. It is submitted that she has been residing with her old and aged father and she has no means of income. It is also stated that she has been facing the trial and incurring litigation expenditure, and prayed for a permanent alimony to meet her needs in a comfortable and respectable manner befitting her standard of life.

10. Learned counsel for the respondent referred to the judgment reported in (2011) 13 SCC 110 and submitted that in the aforesaid case after taking into account that husband was drawing a salary of Rs. 83,000/- the Court had directed for payment of Rs. 40,000/- p.m. as alimony under Section 25 of the Hindu Marriage Act, 1955.

11. On the other hand, learned counsel for the appellant has submitted that appellant, as noted above, has several liabilities as he has to look-after his aged parents, his brother who is suffering from mental health problem and has also to pay for educational fees for the two daughters of his brother and has to provide for the expenses of the marriage of the two daughters of his brother as all of them are dependent upon him.

12. We have heard the counsel for the parties.

13. Before adjudicating on the said issue it would be necessary to refer to Section 25 of the Hindu Marriage Act, 1955 which reads as follows:-

"25. Permanent alimony and maintenance.--

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge immovable property of the respondent.

(2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order Sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under this Section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the Court may deem just."

14. It is true that no arithmetic formula can be adapted regarding the amount the wife, of the appellant, is entitled for permanent alimony but the fact like status, their respective social needs and the financial capacity of the husband are to be considered by taking note of the fact that the maximum amount fixed for the wife should be such which will be enough for her to lead a reasonable and comfortable life considering her status and the standard of living she would have enjoyed had the parties led the conjugal life in normal circumstances.

15. It is apparent from the salary slip filed by the appellant that the gross salary of the appellant is Rs. 61,989/-. In this context, learned counsel for the appellant has argued that appellant has to pay for the loans he has taken and in fact his take home salary is 1/3rd of the gross salary; that he has other liabilities as pointed out above and he has no other source of income; that the agricultural property is a joint property from which he gets Rs. 3,000/- to 4,000/- per annum; that the respondent has no liability whereas the appellant is saddled with the liabilities of looking after his aged parents, his mentally ill brother and has also to pay for the medicine of his aged parents and the education fees for the two daughters of his ill brother.

16. On the other hand it has been canvassed by the learned counsel for the respondent that she is residing with her old and aged father and she does not have any fixed source of income.

17. The plea that loan has been taken by the appellant and he has to pay the installments to liquidated the loan and therefore, the same may be considered, is not acceptable to us. No paper or document has been filed to show that for what purpose the loan was taken. On the contrary it suggests that the appellant is solvent enough to pay the loans which he might have taken for getting benefit of tax concession and for creating future assets. The appellant is employed as an Inspector in the Railway Protection Force and he has ten years of service left and the prospects of the increments in the salary and promotion to a higher rank in future is natural consequence of service. His gross salary is Rs. 61,989/- p.m. and after deduction under the compulsory heads, his net pay is around Rs. 53,000/- p.m. The respondent-wife has to maintain the standard of living which she would have been entitled to had the appellant maintained the conjugal relationship.

18. Thus, considering the totality of the circumstances and social strata from which the parties come and escalation in the cost of living and the daily needs it would be proper to fix the alimony and maintenance to be paid to the respondent at Rs. 19,00,000/- and the lump sum amount of Rs. 19,00,000/- (Nineteen lakhs) to be paid by the appellant within a period of six months from the date of receipt of copy of this order. On failure to pay the lump sum amount of Rs. 19,00,000/- within the stipulated period, the appellant is to pay interest on the said amount at the rate of 9% per annum on the said amount. In case the lump sum maintenance amount is not paid within the stipulated period, the respondent is at liberty to recover the same in accordance with law.

19. The judgment dated 09.08.2005 passed by the learned Principal Judge, Family Court, Dumka in Matrimonial (Divorce) Suit No. 12 of 2001/146 of 2003 is set aside and the marriage solemnized between the appellant/husband and the respondent/wife on 04.12.1997 is dissolved. As aforesaid in paragraph-18 of the judgment, the appellant/husband is directed to pay lump sum maintenance of Rs. 19,00,000/- (Rupees Nineteen Lakhs) to the respondent/wife within the stipulated period of six months.

20. The judgment of the Family Court in Matrimonial (Divorce) Suit No. 12 of 2001 is accordingly modified and this appeal is allowed in part. Consequently all the Interlocutory Applications are closed.