
(1979) ILR Delhi 765

Delhi High Court

Case No: First Appeal No. 73 of 1979

Prem Lata

APPELLANT

Vs

Manmohanchawla

RESPONDENT

Date of Decision: Dec. 7, 1979

Citation: (1979) ILR Delhi 765

Hon'ble Judges: A.B. Rohtagi, J

Bench: Single Bench

Advocate: Urmila Kapoor and S.K. Puri, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) This is a wife's appeal from the decree of divorce of the Additional District Judge dated April 2, 1979.

(2) The appellant Prem Lata was married to the respondent Man Mohan Chawla on January 30, 1973. They lived together till 1975. During this period a child was born to them.

(3) The wife left the matrimonial home. She went to her parents and started living with them. The husband brought a petition for restitution of conjugal rights. On September 29, 1976 the court passed a decree for restitution of conjugal rights. But they did not live together. One year passed. They remained separate as before. The husband then brought a petition for divorce u/s 13(I-A)(ii) of the Hindu Marriage Act (the Act) on 3rd October, 1977. The Additional District Judge granted a. decree of divorce. From his decree the wife appeals to this court.

(4) The wife defended the divorce petition. Her main defense was that she lived with the husband during the period from 26th December, 1976 to 13th January, 1977. The husband's case, on the other hand, was that after the decree of restitution of conjugal rights was passed he, accompanied by his friends, went to the wife's parents' house on

6th October, 1976 to invite her to join him at the matrimonial home but she refused to come back. The wife denied that she was so invited by the husband to the matrimonial home. As her own positive case she pleaded that she had resumed conjugal relationship from 26th December, 1976 to 13th January, 1977. This appears to have been done with a view to defeat the decree for restitution by showing that the period of one year had not passed and Therefore s. 13(1-A) was not available to the husband for obtaining a decree of divorce.

(5) The sole question for decision is whether there has been any resumption of cohabitation between the parties for a period of one year after the passing of the decree of restitution of conjugal rights on 29th September, 1976. This is the single issue which the trial judge framed. Both parties examined witnesses. The trial judge found as a fact that the wife did not live with the husband during the period of one year after the passing of the decree of restitution of conjugal rights. He disbelieved the witnesses produced by the wife. Documents tendered by the wife in evidence were rejected on the ground that they served as admission in her favor and were not worth relying upon. In the result he passed a decree for divorce.

(6) It is unnecessary to rehearse the entire evidence. But one fact stands out in bold relief. The wife had made an application to the Metropolitan Magistrate under s. 125 of the Code of Criminal Procedure for maintenance of the child of the marriage. That application was being heard. The parties were appearing in the court of the Magistrate. The husband was contesting the application for maintenance. Among other dates the case was heard by the Magistrate on 15th January, 1977, 19th February, 1977, 7th March, 1977 and finally on 5th May, 1977 when the order for maintenance at the rate of Rs. 150 per month was made by the court. It is but natural that if the wife had been living with the husband from 26th December, 1976 to 13th January, 1977 he or she would have mentioned this fact in those proceedings. It is an admitted case of the parties that on 7th March, 1977 they made a joint application to the Magistrate that they had decided to live together. The fact of the joint application by the parties to the magistrate is admitted. The application itself has not been produced. It was so natural for the wife to have stated before the court or in the application that the experiment of living together had been tried once for a short while and that they were prepared to try out again. This is how any reasonable creature would have acted. But no such averment was made in the joint application. The husband was cross-examined in those proceedings on 19th February, 1977. No question was put to him suggesting any such reunion as was the wife's case in the divorce court. The upshot is that throughout the proceedings for maintenance the fact of living together for 17 days, i.e., from 26th December, 1976 to 13th January, 1977 was not mentioned even once.

(7) The wife produced a number of witnesses to give oral evidence on two questions. Firstly, that she was prepared to go and live with the husband and it was the husband who was not prepared to take her. Secondly, that she lived with the husband for 17 days or so. None of the witnesses carried any conviction with the judge. He found the evidence

of the wife entirely unconvincing .

(8) The wife produced some documentary evidence. A copy of the police report which, according to her, she made on 13th January, 1977 after she was turned out of the husband's house was tendered. Then she filed two letters which she wrote to her father on 2nd January, 1977 and 10th January, 1977 from the husband's house to prove the fact that she was living with the husband at that time, Lastly, two applications were produced. Her case was that these applications she made to the principal of her school where she was serving as a teacher asking her to change her address. In one application she asked for change of address from father's to husband's. This was the first application. Then after she left the husband's house she made another application" for changing her address again to her parents' house. All these documents were rejected by the judge on the ground that they were self-serving testimony. On the whole evidence, oral and documentary, the judge was not prepared to believe that the wife lived with husband even for a day after the decree for restitution of conjugal rights was passed. He believed the witnesses of the husband and passed a decree for divorce.

(9) u/s 13(1-A) all that the court has to see is that there has been no resumption of cohabitation between the parties to the marriage for a period of one year or upwards after the passing of the decree for restitution of conjugal rights. The underlying object of the legislation is to see whether there has been a resumption of married life and whether the parties are prepared to live together and perform the duties of marriage. But if there has been no resumption of married life and the judge reaches the conclusion that the parties have reached a point of no return, a stage where there is no possibility of reconciliation, he has to grant a decree of divorce.

(10) This provision which was introduced for the first time in 1964 in the Act and which was amended in 1976 by reducing the period of two years to one year was enacted with a view to bring the law in line with the modern trend. The modern trend is not to insist on the maintenance of a union which has irretrievably broken down. Looking to the practical realities of life if the court finds that it is not possible for the parties to live together it will be unreasonable and indeed inhuman to compel them to keep up the facade of marriage even though the breakdown is complete and there is not the remotest chance of their coming together as husband and wife. The test is to see whether the decree of restitution has been obeyed or not. This has to be seen over a period of one year at least, and not for a few days as the wife pleaded. The period of two years was found to be too long, and the legislature reduced it from two to one year in 1976. In the prime of their youths the parties have no time to loose. [See Ram Kali v. Gopal Dass/2nd 1971 (1) Del 6.

(11) Section 13(1-A) lays down the tests to see whether the marriage has completely broken down. The fact that the parties are living apart for a period of one year and upwards inspire of a decree of restitution of conjugal rights is symptomatic of the breakdown of the marriage. Both judicial separation and restitution of conjugal rights are stepping stones to divorce. They are also halting places. The objects is to give parties

time to think coolly, and not in the white heat of emotion, whether they will like to return to the conjugal fold and rebuild their married life. There is no other purpose of restitution or judicial separation. In England the matrimonial remedy of restitution of conjugal rights has been abolished. Irretrievable breakdown of marriage is the ground for obtaining divorce. Significant changes have been made in family law in the United Kingdom, Law Commission in India has also recommended that irretrievable breakdown of marriage be treated as one of the grounds for obtaining a divorce under the Act.

(12) In Indian law the matrimonial reliefs of restitution and judicial separation merely serve as a litmus paper to indicate whether the marriage can be saved or the parties have to say farewell to each other. The expressions "resumption of cohabitation" used in section 13(I-A)(i) and "restitution of conjugal rights" in (ii) mean much the same. S. 13(1-A) is based on the hope of reconciliation. But that hope many times in life remains a distant dream. Even the most fervent and sincere hope of one spouse that there will be reconciliation cannot create a possibility of reconciliation where the other spouse is irreconcilable. The minimum waiting period is one year, be it a decree of judicial separation or restitution. If the parties are not prepared to live together and resume their married life the court will dissolve the marriage. Courts are relieved of the difficult task of assigning where fault lay, an issue in matrimony off-times too subtle for the average man to determine.

(13) I find that the husband's case clearly falls within S. 13(1-A) of the Act. In my opinion the trial judge was right in granting a decree of divorce.

(14) Counsel for the wife argued that in the present case the husband was taking advantage of his own wrong. She referred me to section 23(a) of the Act and submitted that the decree of divorce ought not to have been passed because the husband was taking advantage of his own wrong. I do not agree. It has not been proved by any convincing and satisfactory evidence that the husband was in the wrong and that he was not sincere in resuming a conjugal life. The trial judge has found as a fact that the wife's evidence is unconvincing and that she was not willing for a resumption of conjugal relationship even though the husband invited her to do so.

(15) For these reasons the appeal is dismissed. There will be no order as to costs.