
(1999) 11 AHC CK 0076

In the Allahabad High Court

Case No : First Appeal No's. 181 and 182 of 1998

Deepika @ Baby

APPELLANT

Vs

Naresh Chandra Sighania

RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Evidence Act, 1872 — Section 102

Hindu Marriage Act, 1955 — Section 13, 24, 9

Citation : AIR 2000 All 148 : (2000) 2 AWC 891 : (2000) 2 CivCC 482

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Sunil Ambwani, for the Appellant; Sandeep Saxena, Amit Kumar and R.C. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—As both these appeals involved common questions of law and facts and which were placed and heard together, hence are being disposed of by this common judgment.

2. Both these appeals have been filed by the wife, against the common judgment and decree dated 10.3.1998 passed by the learned Family Judge, Meerut decreeing Suit No. 808 of 1993 filed by the respondent husband for divorce u/s 13 of the Hindu Marriage Act and dismissing Suit No. 530 of 1993 filed by the wife u/s 9 of the said Act for restitution of conjugal rights.

3. Suit No. 808 of 1993 filed by the respondent husband was transferred vide order dated 17.10.1995 passed by this Court in Civil Misc. Transfer Application No. 155 of 1995, to the Family Court at Meerut to be tried and heard along with suit No. 530 of 1993, Smt. Deepika v. Naresh Chand Sighania, and the Family Court was directed to dispose of the proceedings expeditiously preferably within a period of four months from the date of receipt of the record of Ghaziabad. On 4.7.1996. the Family Court consolidated both suits, as common questions were involved and the parties were the same. Suit No. 808 of 1993 was made the

leading case.

4. In suit No. 808 of 1993, which the respondent husband instituted for divorce, his case in brief is that the parties were married on 15.4.1988 according to Hindu rites. After about 5 months of the said marriage, the wife started insisting for living separately from his parents and upon being refused, the wife started harassing him and misbehaved with his parents and created an atmosphere of disharmony in the family and under the compulsion, he started living separately from his parents. Thereafter, the wife started accusing him as a person of loose character and using filthy and objectionable words. Not only this, she used to insult his friends, relatives and accuse even their wives of having illicit relation with him. This behaviour of the wife caused mental agony to him and consequently, he had to isolate himself from his friends and relatives. In the month of June, 1989 a son, and in July, 1991, a daughter were born to them. She misbehaved with his parents, brother and sister and abused his parents and used filthy language and also attempted to assault his parents and threatened even to get him beaten by her brother and also to get him implicated in false case of dowry. About two years ago, the wife gave her parents the golden ornaments weighing about 15 tolas without informing him and on being asked, she refused to give any information. On 14.6.1993, 21.6.1993 and 5.7.1993, he wrote letters to Durga Mahila Samiti, Sanjay Nagar Sector-23, Ghaziabad mentioning therein about the cruel behaviour of his wife and his miserable life and requested the Samiti for help. The wife threatened to kill the children, get him implicated in false cases. The office bearers/workers of the said Mahila Samiti came to his house and tried to reconcile but she threatened him. On 21.6.1993 her parents and brother along with other persons came to his house to beat him and his family members and on 26.6.1993 she threatened to go to Meerut without his consent. On 14.7.1993, when he came to the house in the evening, she abused him and picked up quarrel regarding studies of the children and assaulted him and raised hue and cry and misbehaved with him, upon which many persons of the neighbourhood including Jai Narain, Mahesh Chand and Smt. Vimla came there. In the morning, she abused him and used insulting words like bastard and dog, etc. and threatened to burn herself, and when the husband started going out, she snatched his bag and caught hold of him by his collar on the road and many men and women of the locality came there and rescued him. On 15.7.1993 when he was not in his house, in the evening her father and brother along with some other persons came to the house, abused his mother and threatened her with dire consequences. In this regard, the Durga Mahila Samiti wrote a letter on 6.7.1993 to the Station Officer, Police Station, Kavi Nagar, Ghaziabad to protect him. On 15.7.1993, the wife quarrelled with him and pushed him down as a result of which he sustained injuries and his right elbow was also fractured and thereafter the wife went to her father's house along with valuable articles and ornaments leaving children and hurling abuses. Her said behaviour caused mental agony to him, as such, it had become impossible to lead marital life with her.

5. The appellant-wife contested the suit and denied the allegations made by the respondent-husband in the plaint. Her case, in brief, is as follows : Her father gave sufficient dowry in the marriage but her husband and the members of his family were not satisfied with the dowry and used to harass her and their behaviour was not cordial with her. She went on tolerating the torture in the hope that gradually the children will grow up and the things will be set at right. Her husband is employed in the Accounts Section in M/s. Rathi Alloy and Steel Ltd., Delhi and has also invested money in the share market. In 1992 unfortunately he suffered loss of about rupees 1.5 to 2 lakh and consequently pressed her to bring Rs. 50,000 from her father but her father could not meet the said demand, as his financial condition was not sound. Therefore, from August-September, 1992. his behaviour towards her became very cruel and he started beating her. On 14.7.1993, he beat the son in connection with his studies and when she objected, she was also beaten by him and in the morning of 15.7.1993 he turned her out of his house in the clothes she was wearing and retained the children with him in order to put undue pressure on her. With great difficulty, she came to her father's house. Thereafter her father and relatives went to his house several times and tried to settle the matter, but they insisted on their demand of Rs. 50,000. She stated that her husband deprived her of his and the children's company without any reasonable cause. No one from Durga Mahila Samiti came to her when she was at her in-laws' house. She never made any accusation against his character nor has abused him or his family members. While living at her in-laws' house, she tried to fulfil her obligations yet her husband and his family members harassed her as they were not satisfied with the dowry. Her husband is a clever person and he withdrew money from her account in Ghaziabad without her signature by exerting influence yet she is willing to live with her husband and look after her children and does not want to put an end to her marital life.

6. The husband. in his replication, has denied the allegations made by the wife in her written statement and has reiterated his case which he had pleaded in his plaint.

7. In her Suit No. 530 of 1993 for restitution of conjugal rights, the wife pleaded the same facts which she had put forward in her written statement filed in Suit No. 808 of 1993. Her case was that the husband had deprived her of his and children's company without any reasonable cause for which he had no right.

8. The husband contested the suit and denied the allegations made by her, reiterating his stand which he took in his plaint filed in Suit No. 808 of 1993.

9. The appellant-wife filed her replication and denied the allegations made by the husband in his written statement and reiterated her case which she had already pleaded.

10. Both sides filed documents referred to in the judgment. The husband examined himself alone whereas the wife apart from examining herself, also

examined her brother.

11. The learned Family Judge framed necessary issues in the aforesaid suits and after hearing the learned counsel for the parties and perusing the records, by the impugned judgment and decree, as already stated earlier dismissed the suit filed by the wife for restitution of conjugal rights and decreed the suit filed by the husband for divorce.

12. Aggrieved, the wife has filed the aforesaid appeals before this Court.

13. We have heard the learned counsel for the parties at length and perused the record.

14. The learned counsel for the appellant has submitted that the finding recorded by the trial court that the appellant-wife has treated the respondent-husband with cruelty is erroneous and liable to be set aside. He, accordingly, submitted that the trial court has committed an illegality in decreeing the suit filed by the respondent-husband for divorce.

15. On the other hand, the learned counsel for the respondent-husband has urged that the trial court has rightly recorded the finding that the appellant-wife has treated the respondent-husband with cruelty and, as such, he submitted that the trial court has rightly decreed the suit filed by the respondent-husband.

16. The respondent-husband has filed, the suit for divorce against the appellant-wife on the ground of cruelty. His case in brief is that the wife after about five months of the marriage started harassing him. misbehaving with his parents and creating an atmosphere of disharmony in the family, as her demand for living separately was refused by him and that under compulsion, the husband started living separately from his parents. The wife started accusing him as a person of loose character and used filthy and objectionable words. Not only this, she used to insult the husband's friends, relatives and accuse their wives of having illicit relation with her husband. This behaviour of the appellant-wife caused mental agony to the respondent-husband and consequently, he had to isolate himself from his friends and relatives. His case is that she misbehaved with his parents, brother and sister and abused his parents and also attempted to assault them. On 14.7.1993, when he came to the house in the evening, she abused him and picked up quarrel regarding studies of the children and assaulted him and raised hue and cry and misbehaved with him, upon which many persons of the neighbourhood including Jal Narain, Mahesh Chand and Smt. Vimla came there. In the morning she abused him and used insulting words like bastard and dog etc. and snatched his bag and caught hold of him by his collar on the road and many men and women of the locality came there and rescued him. His further case is that she pushed him down as a result of which he sustained injuries and his right elbow was fractured and thereafter she went to her father's house along with valuable articles and ornaments leaving children and hurling abuses. According to him the said behaviour of the appellant-wife caused mental agony to him and as such it has become impossible for him to lead marital life with her.

17. In support of his case, the husband has only examined himself as P.W. 1. In his statement, he has supported his case, but it is significant to notice that he has not produced his parents, his brother, his sister, his friends and relatives who were material witnesses to prove the allegations made by him in his pleadings. He has also not examined any member of Durga Manila Samiti to prove his case. Having gone through his testimony, in the absence of testimony of these persons, we do not consider proper to place reliance on his solitary testimony.

18. According to his case on 15.7.1993. the wife quarrelled with him and pushed him down causing injuries to him and his right elbow was also fractured. In this connection, it is relevant to notice that he has not produced any X-ray plate/report regarding the said fracture and has only produced a medical certificate (Paper No: 93-C/2) of Krishna Hospital and Trauma Centre. From a perusal of this paper, only this much is clear that he had been under treatment from 17.7.1993 to 30.8.1993 as a case of Hair-line fracture head of radius with multiple abrasion. This medical certificate does not establish that the fracture was caused to him on 15.7.1993. In the First information Report lodged by him on 16.7.1993 (Paper No. 87-C/2). it was not mentioned by him that in the morning of 15.7.1993. he was pushed by his wife as a result of which he fell down and his right elbow was fractured. Thus the respondent-husband has failed to prove that on 15.7.1993 he was pushed by his wife as a result of which he fell down and his right elbow was fractured. in this connection, the finding of the trial court is based on the reasoning that the wife has not stated that the said fracture was not caused by her and was caused otherwise. This reasoning of the trial court is fallacious. According to Section 102 of the Evidence Act. the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Thus the reasoning given by the Court below that the wife has not stated that the fracture was not caused by her and was caused otherwise is fallacious and cannot be sustained. In the present case, the respondent-husband has alleged that the fracture was caused on 15.7.1993 by his wife and, therefore, it was for him to establish this fact which he has utterly failed to do so.

19. The learned counsel for the respondent-husband has further submitted that the wife has made accusation against her husband that he is a person of loose character but has failed to prove the same and as such, he urged, it amounts to mental cruelty and has submitted that the finding recorded by the trial court is justified and needs no interference. In this connection, he has referred to Paper Nos. 25-C/2. 26-C/2 and 27-C/2 filed in suit No. 530 of 1993.

20. On this issue, the learned Family Judge has referred to the judgments reported in Smt. Santana Banerji v. Sachindra Nath Banerji AIR 1990 Cal 367 ; Kiran Mandal Vs. Smt. Mohini Mandal, : Smt. Kamini Gupta v. Mukesh Kumar Gupta. AIR 1985 Del 221 : Leela Devi v. Suresh Kumar AIR 1994 Raj 128 and Smt. Shanti Devi Vs. Raghav Prakash, , and has concluded that the wife has made false allegations against the husband that he is a man of bad character and

has illicit relation with other women which amounts to mental cruelty and as such, he concluded that the wife has treated the husband with cruelty. In the said judgments relied on by the learned Family Judge, the wife had pleaded and also made statement regarding the bad character of the husband.

21. The papers referred to by the learned counsel for the respondent-husband are objection, affidavit and rejoinder filed by the wife against the application u/s 24 of the Hindu Marriage Act. Any allegation made in the proceedings u/s 24 of the Hindu Marriage Act could not be said to be the pleadings of the parties in the suit. The term "pleadings" means "the plaint and written statement". In this connection, it is relevant to notice that the wife-appellant has neither pleaded "in her suit or in the suit filed by the respondent-husband that her husband is a person of immoral character nor has she stated so in her statement before the Court. On the contrary, in her examination-in-chief. she has stated that she never made any accusation against her husband regarding his character and in the cross-examination, she denied that she ever made any such accusation against her husband. Thus, it is clear that she neither pleaded nor has she made any statement regarding the character of her husband. The aforesaid judgments. therefore, are distinguishable and are not applicable to the facts of the present case. Therefore, it is clear that the finding recorded on this issue by the learned Family Judge is erroneous and unsustainable. Accordingly, we set aside his finding and hold that the respondent-husband has failed to prove that the wife treated him with cruelty.

22. The learned counsel for the appellant-wife has further submitted that the finding recorded by the trial court that the wife herself has left her husband leaving her children with her husband and that the husband has not deserted her, is against the evidence on record and the same is liable to be set aside. He, accordingly, urged that the trial court has committed an illegality in dismissing the suit filed by the wife for restitution of conjugal rights.

23. The learned counsel for the respondent-husband, on the other hand, has submitted that it was proved from the evidence on record that the wife has deserted the husband and as such, he submitted that the trial court has rightly dismissed her suit.

24. In her suit, the case of the wife is that on 14.7.1993. the husband has beaten the son in connection with studies and when she objected she was also beaten by him and in the morning of 15.7.1993, the husband turned her out of the house and that the husband has deprived her of his and the children's company without any reasonable cause for which he had no right. In support of her case, she examined herself as D.W. 1 and her brother Anil Kumar Garg as D.W. 2 and has also filed documentary evidence. In her statement, she has supported her case. In the examination-in-chief, she has stated that her husband suffered a loss in share market and started putting pressure on her for bringing Rs. 50,000 from her father, but her father could not meet the said demand, as his financial position was not sound and that on 14.7.1993 he has beaten the son

Anurag in connection with his studies and when she objected, she was also beaten and that in the morning of 15.7.1993. she was turned out of the house by her husband in the clothes she was wearing. She has also stated that she is ready to live in her in-laws' house with her children and wants to look after them. She has also stated that on 21.11.1990. she has written a letter to her father (Paper No. 115-Ka) that she was beaten by her in-laws and that on 23.11.1990, she has written another letter to her father (Paper No. 116-Ka). She was cross-examined at length but nothing material could be elicited to discredit her testimony. Her brother Anil Kumar Garg (D.W. 2) supported her case and has stated that on 15.7.1993, his sister was beaten by her in-laws and was turned out. He was also cross-examined but nothing material could be elicited to discredit his testimony. We, accordingly, accept the correctness of their testimonies. The Paper Nos. 115-Ka and 116-Ka, are the letters dated 21.11.1990 and 23.11.1990 respectively which were written by her to her parents. These letters support her case. On going through her cross-examination we do not find that any question was put to her regarding these letters. This shows that the genuineness of these letters and the contents thereof were not challenged by the respondent-husband. From this, the only conclusion that could be drawn is that the respondent-husband had no dispute regarding these letters and had nothing to say against these letters. Thus, there is nothing to disbelieve these letters which support her case.

25. There is yet another circumstance which goes in favour of the appellant-wife which entitles her to the relief claimed. In her statement, the appellant-wife has stated that she is willing to live in her-in-laws' house along with her children. The respondent-husband in his statement has stated that it is not possible for him to live with his wife but it is significant to notice that the respondent-husband has not stated that he ever made any effort to bring his wife to his house and live with her. This circumstance also goes in favour of the appellant-wife. Thus it is established that the appellant-wife was turned out of the house by the respondent-husband without any reasonable cause. The finding recorded to the contrary by the learned Family Judge is erroneous and cannot be sustained. We, accordingly, set aside the finding of the learned Family Judge and hold that wife was turned out of the house by the respondent-husband without any reasonable cause.

26. After the arguments were heard and judgment reserved, the learned counsel for the respondent-husband filed Xerox copies of the judgments in Dr. N.G. Dastane Vs. Mrs. S. Dastane, : 1996 HLR 280 (SC) : AIR 1985 All 253 : I (1993) DMC 565 (Cal) : (1996) 1 HLR 289 (AP) : I (1995) DMC 329 (P&H) : 1998 FLC 417 (Cal) : II (1999) DMC 40 (MP) : 1996 (1) HLR 550 (Cal) : 1997 (1) HLR 577 (P&H) : I (1994) DMC 417 (AP) : II (1999) DMC 48 (AP) : I (1996) DMC 142 (MP) : II (1999) DMC 29 (P&H) : I (1995) DMC 532 (Bom) ; II (1993) DMC 64 (Del) : II (1997) DMC 69 (Cal) : I (1996) DMC 519 (P&H) : II (1997) DMC 247 (P&H) : 1998 (2) HLR 688 (AP) ; I (1997) DMC 648 (Ker) : Sulekha Bairagi Vs. Prof. Kamala Kanta Bairagi and Another, and I (1997) DMC 338 (Bom). Having

gone through these judgments, we find that they are distinguishable on facts and hence are of no help to the respondent-husband.

27. In view of the discussions made above, these appeals succeed and are allowed with cost. The impugned judgments and decrees passed by the trial court dated 10.3.1998 are set aside. Suit No. 808 of 1993 filed by the respondent-husband for divorce is dismissed and suit No. 530 of 1993 filed by the appellant-wife for restitution of conjugal rights is decreed.