

(2017) 01 JH CK 0194
In the Jharkhand High Court
Case No : 234 of 2010

Kartik Kumar Mahato

APPELLANT

Vs

The Director (HRD), Damodar Valley Corporation

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 498-A](#)
< a> -
< a href=5209>Hindu Marriage Act, 1955, < a href=5209-9>Section 9, < a href=5209-13>Section 13(1)(i-a), < a href=5209-13>Section 13(1)(i-b) -
Restitu

Citation : (2017) 01 JH CK 0194

Hon'ble Judges : H. C. Mishra, Dr. S.N.Pathak

Bench : DIVISION BENCH

Advocate : D.K. Karmakar, Sahjanand Sharma

Judgement

1. Heard learned counsel for the appellant as also learned counsel for the respondent.
2. The appellant is aggrieved by the Judgment and Decree dated 04.10.2010, passed by the learned Principal Judge, Family Court, Jamshedpur, in Matrimonial Suit No. 93 of 2008, whereby the suit filed by the appellant for dissolution of marriage between the parties by decree of divorce under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, has been dismissed by the Court below.
3. It may be stated that the impugned Judgment shows that during the pendency of the case in the Court below, the matter was referred to the Mediation Centre and it is an admitted position that wife was ready to go with the husband but the appellant was not ready to keep the wife.
4. During the pendency of this appeal also, effort for conciliation between the parties was again taken by this Court and the matter was sent before the Mediator at JHALSA for an amicable settlement of disputed between the parties. The report has since been received, which shows that in spite of the best efforts

taken, no final settlement could be arrived between the parties and efforts of mediation failed. Accordingly, the matter is heard on merits.

5. The appellant filed the suit for dissolution of marriage between the parties by decree of divorce on two grounds, namely, cruelty and desertion. According to the appellant's case, the marriage between the parties was solemnized on 15.04.2007 according to Hindu Rites and Customs and parties started living at the matrimonial home leading the conjugal life. The cordial relationship did not continue for long and it is alleged that the behaviour of the wife became abnormal causing the serious annoyances to the appellant and his family members. It is alleged that on 13.07.2007, she went to her parents' place along with her brother without the consent of the appellant and thereafter, she was living continuously at her parental house. In spite of the efforts of the petitioner to bring her back, the respondent refused to come back to the matrimonial home. The specific case of the appellant in the Court below was that he was always ready and willing to keep his wife with him with full dignity and also to maintain her by providing all her requirements in life. The appellant had also filed a suit for restitution of conjugal right under Section 9 of the Hindu Marriage Act in the Family Court, Jamshedpur, which was numbered as Matrimonial Suit No. 263 of 2007, which was kept pending due to non-appearance of the respondent. It is alleged that all of a sudden on 23.04.2008, the respondent came at the residence of the appellant along with her baby and she abused the mother, father and elder brother of the appellant in filthy languages creating nuisance openly in front of the house. Again same act was repeated on 24.04.2008 and she also threatened all the family members to falsely implicate in criminal cases. Accordingly, the suit for divorce was filed on the grounds of cruelty and desertion by the appellant in the Court below.

6. Upon notice, the respondent appeared and filed her show-cause denying all the allegations made against her. She stated that she is ever ready to lead conjugal life with the appellant. It is the case of the respondent that she was being subjected to the cruelty and torture and she was turned out of the matrimonial house, but forgetting all the previous disputes and differences, she is ready to lead the conjugal life with her husband.

7. On the basis of the pleadings of the parties, issues were framed by the Court below, in which issue Nos. 3 and 4 were the main issues to be decided in the case, i.e., whether after solemnization of the marriage the respondent treated the petitioner with cruelty and whether the respondent deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. The issue No. 4 relating to desertion did not stand in the eyes of law, inasmuch as, according to the case of the petitioner himself, the respondent had left the matrimonial house on 13.07.2007, whereas, the suit was filed on 25.04.2008, i.e., within one year from the date of alleged desertion and accordingly, no case was made out for a decree of divorce on the ground of desertion. The only ground that survived was alleged cruelty by the respondent

wife.

8. In the Court below, five witnesses were examined on behalf of the appellant out of whom one witness did not turn out for his cross-examination and accordingly, only four witnesses remained for consideration, who were P.W.-1 Tapan Ghosh, the petitioner himself; P.W.-2 Sanjay Kumar Ram; P.W.-4 Satya Narayan; and P.W.-5, Chanchal Ghosh, the elder brother of the appellant. Some documents were also proved by the appellant in the Court below, which were marked exhibits and they were the complaint petition in C/1 Case No. 958 of 2008 and its order-sheets, which showed that a case under Section 498-A of the Indian Penal Code and other offences was filed by the respondent wife against the appellant, in connection of which, the appellant had to remain in judicial custody for some period. Four witness were examined on behalf of the respondent, including the respondent-wife.

9. The impugned Judgment shows that witnesses examined on behalf of the petitioner, namely, P.W.-2 Sanjay Kumar Ram and P.W.-4 Satya Narayan, have supported the case of the petitioner of cruelty stating that on 23.04.2008 and 24.04.2008, the respondent had gone to the house of the petitioner and had used abusive languages against the family members of the petitioner. P.W.-1 Tapan Ghosh, who is the petitioner himself and P.W.-5 Chanchal Ghosh, who is the elder of the petitioner, have stated about the abnormal behaviour and acts of cruelty of the respondent, including the alleged cruelty meted to the family members on 23.04.2008 and 24.04.2008. These witnesses have also stated that she left the matrimonial house without consent and permission of the petitioner or his parents on 13.07.2007 and since then, she is living in her parental house.

10. Learned counsel for the appellant submitted that the impugned Judgment and Decree cannot be sustained in the eyes of law, inasmuch as, the appellant had been able to prove that the respondent had treated the appellant with cruelty. It is also submitted by learned counsel that though during the pendency of the case in the Court below, only one criminal case was filed against the petitioner by the respondent, but subsequently, another criminal case has also been filed by the respondent against the petitioner and this also amounts to cruelty. Learned counsel accordingly, submitted that it is fit case in which the Judgment and Decree passed by the Court below be set aside and marriage between the parties be dissolved by a decree of divorce.

11. Learned counsel for the respondent, on the other hand, has opposed the prayer and has submitted that though it is the case of the appellant that the respondent had deserted the appellant and had treated him and his family members with cruelty, but the facts remains that the ground of desertion did not stand in the Court below in view of the fact that the suit was filed within the period of one year of the alleged date of desertion. It is submitted by the learned counsel that in fact the respondent was being treated with cruelty and torture and she was turned out of the matrimonial home, due to which she filed criminal case against her husband. It is submitted that the witnesses examined on behalf

of the respondent have fully supported the case of the respondent, and even if the allegation of the alleged abuses of two dates are taken to be true for argument sake, the same cannot be said to a cruelty of such nature, so as to entitle the appellant to decree of divorce. Learned counsel accordingly, submitted that there is no merit in this appeal.

12. Having heard learned counsels for the parties and upon going through the record, we find that though the witnesses, particularly, the appellant and his elder brother have stated about the general cruelty and abnormal behaviour of the respondent, but the case of the appellant was that the appellant was always ready to keep his wife with full dignity and honour and also to maintain her by providing all her requirements in life. He had also filed suit for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. Thus, the alleged cruelty, if any, prior to the filing of the suit for restitution of the conjugal rights stood mitigated by statement of the appellant himself. What remains thereafter, is only the allegation of abusive languages used by the respondent on two specific occasions, i.e. 23.04.2008 and 24.04.2008. Apart from that, there is no other allegation of any cruelty against the respondent in the entire suit.

13. In our considered view, use of abusive languages only on two occasions cannot be treated as a cruelty so as to make out a ground for a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act. Fact remains that the witnesses examined on behalf of the respondent in the Court below have fully denied these allegations and it is the case of the respondent that she is always willing and ready to lead conjugal life with her husband. P.W.-1, Tapan Ghosh, who is the appellant here, has also admitted in his cross-examination that the matter was referred to Mediation Centre and it is true that his wife was ready to go with him but he was not ready to keep his wife and his wife is still ready to live with him.

14. In our considered view, no case is made out for dissolution of marriage between the parties on the ground of alleged cruelty and the Court below has rightly decided the issue against the petitioner and in favour of the respondent. There is no scope of any interference in the impugned Judgment and Decree dated 04.10.2010, passed by the learned Principal Judge, Family Court, Jamshedpur, in Matrimonial Suit No. 93 of 2008.

15. There is no merit in this appeal and the same is accordingly, dismissed. Consequently, the interlocutory application also stands disposed of.