

(1947) 10 AHC CK 0009
In the Allahabad High Court

Mrs. Merle Noreen

APPELLANT

Vs

Mr. Henry Donald Nott

RESPONDENT

Date of Decision : 17-10-1947

Acts Referred:

Citation : AIR 1948 All 326 : (1948) 18 AWR 51

Hon'ble Judges : Moothan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Moothan, J.—The question is whether a husband, the respondent in a suit for judicial separation, can include in his written statement a claim

for damages against the alleged adulterer of his wife. That he can do so in England is clear from the case in ILR 1913 . 75.

2. Mr. Man Singh relies on Section 15, Indian Divorce Act, which, he says, excludes by implication the filing of any sort of counter-claim save in

suits for dissolution of marriage. In ILR 1913 . 75 the President reached the conclusion that a husband may, in answer to his wife's petition for

judicial separation, claim damages against an alleged adulterer after a consideration inter alia of the effect of Section 2, Matrimonial Causes Act,

1856. Now this section (which has been replaced by Section 180, Supreme Court of Judicature (Consolidation) Act, 1925) was the basis of

Section 15 of the Indian Act, and the two sections are to the same effect; in consequence it appears to me to follow that the existence in the Indian

Divorce Act of Section 15 is not per se bar to the course which has been followed by the respondent in this case. More over Section 7 of the

Indian Act, provides that, subject to the provisions of that Act this Court shall, in

all suits and proceedings thereunder, Act and give relief on principles and rules which in its opinion are as nearly as may be conformable to the principles and rules on which the English Courts give relief. In my opinion there is nothing in the Indian Act which prohibits the adoption of the rule for which the case in ILR 1913 . 75 is authority, and consequently I consider that this Court should follow the practice sanctioned by that case, particularly in view of the saving of expense and time which is effected thereby. I, therefore, answer the preliminary issue, namely, whether the respondent's claim for damages against Mr. Edward Randolph is maintainable in its present form, in the affirmative. The question of costs on this issue will be considered at the conclusion of the hearing of the petition.