

(2000) 04 BOM CK 0018
In the Bombay High Court
Case No : Ref. Case No. 1 of 2000

Rajesh Premchand Suryawanshi	Vs	APPELLANT
Ujwala Rajesh Suryawanshi		RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Divorce Act, 1869 — Section 10, 17

Citation : AIR 2000 Bom 369 : (2000) 3 ALLMR 554 : (2002) 1 DMC 536 : (2000) 3 MhLj 822

Hon'ble Judges : V.K. Barde, J;B.B. Vagyani, J;A.S. Bagga, J

Bench : Full Bench

Advocate : D.B. Arole, for the Appellant; Absent, for the Respondent

Judgement

B.B. Vagyani, J.—Heard Mr. D.B. Arole, learned Counsel for the petitioner. The respondent, though duly served with notice of Reference is absent.

2. This is a Reference u/s 17 of the Indian Divorce Act, 1869 (hereinafter referred to as the Divorce Act for the sake of brevity), for confirmation of a decree for dissolution of marriage made by the Additional District Judge/ Ahmednagar. The learned Additional District Judge, Ahmednagar passed the decree for dissolution of marriage on 23.3.1999 and after expiry of statutory period of six months, as contemplated in Proviso to Section 17 of the Divorce Act, the said decree is placed before us for confirmation. Few facts relevant for the purpose of digesting the point involved in the matter of confirmation of divorce decree, are these.

3. The original petitioner Rajesh and original respondent Ujwala profess Christian religion. Petitioner Rajesh married to respondent Ujwala on 31.5.1995 as per Christian religious rites. The marriage took place at Ahmednagar. After solemnization of the marriage, respondent Ujwala lived with the petitioner Rajesh as his wife at Ahmednagar. The respondent Ujwala stayed with the petitioner Rajesh for short duration. During this short period, the parties did not pull on well. There used to be quarrels in-between them. The respondent wife told on

the face of petitioner Rajesh that she did not want to stay with him. She was arrogant. She did not perform her domestic duties. The respondent wife insulted the petitioner husband in filthy language. The respondent wife left the matrimonial home and went to her mother. She compelled the petitioner husband to leave his own house and to reside with her at her mother's place. The petitioner was expecting sea-change in the attitude of respondent wife. But even at her mother's place, the petitioner husband did not see any change in her attitude. All the while, the respondent wife picked up quarrels with the petitioner husband and insulted him like anything. During this period, the respondent wife gave birth to a female child on 29.4.1996. The petitioner husband has made a serious grievance that the respondent wife did not allow him to touch his daughter. The ultimate climax took place on 2.5.1996. On that fateful day, the respondent wife, her mother and brother assaulted the petitioner husband and drove him out of the house.

4. The petitioner husband then kept quiet for some time. After having felt that the atmosphere had cooled down, he had been to the respondent wife to bring her back to the matrimonial home. That time, the stars favoured him. The respondent wife returned to the matrimonial home. However, the happiness did not last long. Within 10 to 12 days, the respondent wife left the matrimonial home without any reason and without intimating the petitioner husband. She went to her mother's house. The petitioner husband on number of occasions tried to pacify respondent wife and requested her to join his company but all the efforts did not bear fruits. Ultimately, by way of last resort, the petitioner husband served a notice on the respondent wife and asked her to resume cohabitation. But the respondent wife did not give any response and refused to join the company of the petitioner husband. The respondent wife, without sufficient reason, deserted the petitioner husband.

5. After having lost all hopes, the petitioner husband filed marriage petition u/s 10 of the Divorce Act in the District Court at Ahmednagar for getting a decree of divorce on the ground of desertion. After service of notice divorce petition, the respondent wife appeared in the Trial Court through her Advocate. She filed an application for interim alimony. However, the respondent wife did not press the said application for grant of interim alimony. The respondent wife did not file her written statement. She neither remained present in the Court nor participated in the divorce proceeding. Therefore, the learned Additional District Judge, Ahmednagar proceeded with the matter ex-parte.

6. The petitioner husband examined himself at Exh. 22. He spoke in terms of the allegations made in the petition. The oral testimony of the petitioner husband has gone unchallenged in the evidence on record.

7. The learned Additional District Judge appreciated the solitary oral evidence of the petitioner husband. On the basis of unchallenged version of the petitioner husband, the learned Additional District Judge has come to a conclusion that the respondent wife has deserted the petitioner husband without any reason and

consequently dissolved the marriage of the petitioner husband with the respondent wife by decree for dissolution of marriage, as contemplated u/s 10 of the Divorce Act. The learned Additional District Judge, Ahmednagar has sent the said decree for the purpose of confirmation as envisaged in Section 17 of the Division Act.

8. This Court issued notices to the parties. The notices are duly served on both the parties. The petitioner husband appeared through Advocate Mr. D.B. Arole. The respondent-wife did not remain present.

9. The learned Advocate Mr. Arole submitted before us that the decree of dissolution of marriage passed by the Additional District Judge, Ahmednagar is based on the unchallenged version of the petitioner husband and, therefore, the divorce decree is liable to be confirmed u/s 17 of the Divorce Act.

10. We gave anxious consideration to the submissions advanced by the learned Advocate Mr. D.B. Arole for the petitioner husband. At the very outset, we express our disagreement for the simple reason that in case of husband the provisions of Divorce Act do not contemplate dissolution of marriage on the ground of desertion. The ground of desertion for the purpose of decree for dissolution of marriage is unknown to the Divorce Act. Admittedly, the petitioner husband has sought relief of dissolution of marriage u/s 10 of the Divorce Act. Section 10 of the Divorce Act reads as under :

"Section 10. When husband may petition for dissolution.- Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery..."

11. From careful perusal of the language of Section 10 of the Divorce Act, it is abundantly made clear that the husband may present a petition to the District Court or to the High Court for grant of decree for dissolution of marriage on the ground of adultery. No ground other than adultery is provided in Section 10 of the Divorce Act. From the close scrutiny of the recitals of the marriage petition and the solitary oral testimony of the petitioner husband, it is revealed that the petitioner husband has sought dissolution of marriage on the ground of desertion. There is no ambiguity with regard to the ground for dissolution of marriage. Admittedly, the petitioner husband has filed a divorce petition u/s 10 of the Divorce Act. The ground of desertion is not at all available to the petitioner husband for the purpose of getting a decree for dissolution of marriage. The only ground available to the petitioner husband is of wife's adultery, that too after solemnization of the marriage. The petitioner husband has not at all asked the relief of dissolution of marriage on the ground of adultery.

12. The learned Advocate Mr. D.B. Arole then submitted that the Judges are social engineers and, therefore, Judges should innovate new tools to forge the appropriate relief ignoring cast iron pleadings and the reliefs claimed therein. He further submits that the respect for law depends upon the creative abilities of the

Judges. He appealed to us that the ground of desertion should be read in Section 10 of the Divorce Act relying on the provisions of Section 7 of the Divorce Act.

13. The fervent appeal made by learned Advocate Mr. D.B. Arole no doubt sounds well. But the provisions of Section 10 of the Divorce Act cannot be stretched in any manner and to any extent. The Court cannot go beyond the provisions of Section 10 of the Divorce Act. A somewhat similar situation had arisen before the Supreme Court in the case of Reynold Rajamani and Another Vs. Union of India (UOI) and Another, . Both the appellants before the Supreme Court belonged to Roman Catholic community. Their marriage was solemnized under Indian Christian Marriage Act, 1872. After some time, they put in a joint petition u/s 28 of the Special Marriage Act for a decree of divorce by mutual consent in the Court of learned District Judge. The Trial Court dismissed the petition on the ground that Section 28 of the Special Marriage Act could not be availed of. A writ petition filed by the appellants was dismissed by the High Court of Delhi. Thereafter matter was taken up to the Supreme Court. A reliance was placed on Section 7 of the Divorce Act and it was appealed to the Supreme Court that the divorce decree be granted on the ground of mutual consent. The Supreme Court has held that Section 10 of the Divorce Act specially sets forth the grounds on which a marriage may be dissolved, additional grounds cannot be included by the judicial construction of some other section unless that section plainly intends so. Section 7 does not intend so. The ground of mutual consent is available u/s 28 of the Special Marriage Act, 1954 and u/s 13-B of the Hindu Marriage Act, 1955. The Court cannot read that ground u/s 10 of the Divorce Act by adopting a policy of social engineering.

14. The Supreme Court has unequivocally observed that when a legislative provision specifies the grounds on which divorce may be granted, they constitute the only conditions on which the Court has jurisdiction to grant divorce. If grounds need to be added to those already specifically set forth in the legislation, that is the business of the Legislature and not of the Courts. It is another matter that in construing the language in which the grounds are incorporated, the Courts should give liberal consideration to it. Indeed, the Courts must give the fullest amplitude of meaning to such a provision. But it must be meaning which the language of the section is capable of holding. It cannot be extended by adding new grounds not enumerated in the section.

15. Finally the learned Advocate Mr. D.B. Arole has come down heavily on the discriminatory treatment given to the Christian husband and submitted that Section 10 is violative of Article 14 of the Constitution of India. Without multiplying the length of the judgment, we would like to refer the ratio in the case of Anil Kumar Mahsi v. Union of India, I (1994) DMC 254 (SC)=1994 (2) All IHLR 111. The vires of Section 10 of the Divorce Act were challenged before the Supreme Court. The writ petition filed by the Christian husband has been dismissed by the Supreme Court. The Supreme Court has observed that there is no substance in the challenge by the petitioner husband to the vires of provision

of Section 10 of the Divorce Act as being discriminatory against the husband and, therefore, violative of Article 14 of the Constitution of India. The Supreme Court has further observed that the individuals not willing to submit to the Indian Divorce Act are not obliged to marry exclusively under that law. They have the freedom to marry under the Special Marriage Act, 1954. Having, however, married under the Act and accepted its discipline, they cannot be heard to complain of its rigours, if any.

16. After having heard learned Advocate Mr. D.B. Arole sufficiently at length, and after having considered the material placed on record in the light of relevant legal provisions of the Divorce Act, we propose to refrain bestowing the confirmation on the decree of dissolution passed by the learned Additional District Judge, Ahmednagar. The learned Additional District Judge has committed illegality and impropriety in reading the ground of desertion in Section 10 of the Divorce Act. A divorce on the ground of desertion is not known to Section 10 of the Divorce Act so far as Christian husband is concerned. Under the circumstance, it is impermissible to dissolve the marriage by decree of divorce on the ground of desertion.

17. We are practically at the fag end of the judgment. Before parting with our judgment, we want to comment on the manner in which the learned Additional District Judge, Ahmednagar has approached the case and ultimately decided the issue of divorce involved in the divorce petition filed by the petitioner husband, contrary to the mandate of law as contemplated u/s 10 of the Divorce Act. In case of Christian husband, Section 10 of the Divorce Act does not at all contemplate a ground of desertion for dissolution of marriage. From perusal of entire record, it is clearly seen that the learned Additional District Judge, Ahmednagar was conscious of the relief claimed u/s 10 of the Divorce Act. However, while appreciating the solitary evidence of the petitioner husband, he deviated from the track and moved to a wrong destination. He has committed a blatant error of law by reading ground of the desertion in Section 10 of the Divorce Act. There was no challenge to the matrimonial petition filed by the petitioner husband and, therefore, the learned Additional District Judge thought it fit to resort to a short-cut.

It is to be remembered that short-cut sometimes proved to be wrong cut. Even though the matrimonial cases are undefended, Judges are bound to apply their mind to the relevant legal provisions and to the oral evidence. In the quest of adding a monthly disposal the learned Additional District Judge has made an unjustified haste in disposing of the matrimonial petition for divorce by throwing the legal provisions to the wind.

18. It is to be noted that the decree for divorce passed u/s 10 of the Divorce Act is required to be sent to the High Court for confirmation. In spite of this legal position, the learned Additional District Judge, Ahmednagar did not apply his mind to the legal provisions. He has exercised his jurisdiction in an illegal manner and has committed a blunder of law. Such kind of legal mistake is not at all

expected from a senior and experienced Judge like Additional District Judge, Ahmednagar. We, therefore, like to draw the attention of the learned Additional District Judge, Ahmednagar to the actual words used in Section 10 of the Divorce Act. We hope that in future, such mistakes are avoided.

19. In the result, we refuse to bestow our confirmation on the decree of divorce passed by the learned Additional District Judge, Ahmednagar. We, therefore, reject the Reference and dismiss the original Marriage Petition No. 3 of 1997 with no order as to costs.