

(2017) 10 RAJ CK 0030
In the Rajasthan High Court
Case No : 2387 of 2015

Seema Kumari w/o Khema Ram

APPELLANT

Vs

Khema Ram s/o Bharmal Ram

RESPONDENT

Date of Decision : 24-10-2017

Acts Referred:

[Hindu Marriage Act, 1956](#), Section 13, Section 28, Section 13B

Citation : (2017) 10 RAJ CK 0030

Hon'ble Judges : Arun Bhansali

Bench : SINGLE BENCH

Advocate : Rameshwar Dave, Shailendra Chouhan

Final Decision : Allowed

Judgement

1. This appeal under Section 28 of the Hindu Marriage Act, 1956 ("the Act") is directed against the judgment and decree dated 14/10/2015 passed by the Addl. District Judge No.1, Barmer, whereby, the petition for dissolution of marriage filed by the appellant under Section 13 of the Act has been rejected.
2. The petition for dissolution of marriage was filed by the appellant inter alia with the averments that her marriage was solemnized with the respondent on 10/6/2011. It was alleged that immediately after the marriage, the respondent and his mother used to misbehave with her, resulting in mental and physical cruelty. The intervention of the society also did not help and they continued to misbehave and it was alleged that after living for 3-4

months with the respondent, the appellant came back to her parental home. It was submitted that it was not possible for the

appellant to live with the respondent and he has abandoned the appellant. Based on the said averments, it was prayed that the marriage be dissolved.

3. The respondent filed his reply admitting the fact of marriage and denied the allegations pertaining to physical and mental cruelty and submitted that at social level, with the intervention of people, divorce has already been taken place between the parties.

4. Based on the averments of the parties, two issues were framed by the trial court including the issue pertaining to relief. On behalf of the appellant, she herself was examined and on behalf of respondent no evidence was produced. The trial court after hearing the parties came to the conclusion that the evidence led by the appellant has not been controverted, on the other hand in the reply it has been stated that the divorce has already taken place and in view of the submissions made by the parties, the parties should have approached the court under Section 13B of the Act and as the application was not filed under Section 13B, the allegations of cruelty were not established, dismissed the petition.

5. It is submitted by learned counsel for the appellant that the trial court committed error in coming to the conclusion that as the respondent in his reply claimed that marriage between the parties was already dissolved and did not produce any evidence, the parties should have approached the court under Section 13B of the Act and despite uncontroverted evidence by the appellant, dismissed the petition. It was submitted that the trial court has not recorded a finding that there is any collusion between the parties so as to deprive the appellant from relief of dissolution of marriage under Section 13 of the Act and, therefore, the order

impugned deserves to be quashed and set aside and the petition seeking dissolution of marriage deserves to be accepted.

6. Reliance was placed on a judgment of this Court in Rekha Prajapat vs. Manoj Prajapat : 2016 (4) DNJ (Raj.) 1579.

7. Learned counsel for the respondent submitted that marriage between the parties already stood dissolved at the social level and, therefore, if the appeal is accepted the respondent has no objection.

8. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

9. As already noticed hereinbefore the allegations regarding mental and physical cruelty were made by the appellant against the respondent, in response thereto the respondent though denied the said averments, came out with a case that the marriage already stood dissolved between the parties based on customary divorce granted by him. Despite the said written statement, the trial court framed issue pertaining to mental and physical cruelty, the appellant appeared in the witness box and reiterated her allegations. The respondent did not cross examine the appellant, however, looking to the conduct of the parties, the trial court came to the conclusion that the parties should have approached the court under the provisions of Section 13B of the Act and rejected the petition filed under Section 13 of the Act.

10. Merely because the proceedings were not contested in right earnest by the respondent and a plea was taken in the written statement regarding customary divorce having been already granted by the respondent, it cannot be said that the allegations made in the petition by the appellant, regarding which she appeared in the witness box but was not cross examined and no evidence thereafter was led by the respondent, were not

established and based on the grounds alleged in the petition, the divorce could not be granted. The only responsibility of the court under Section 23 of the Act is to ensure that the petition is not presented or prosecuted in collusion with the respondent, no such finding has been recorded by the trial court for refusing the divorce on the basis of material available before it.

11. The Division Bench of this Court in the case of Rekha Prajapat (*supra*) in almost similar circumstances *inter alia* observed as under while setting aside the order passed by the family court :

"4. The respondent in his written statement denied allegations of cruelty but simultaneously stated that he had no objection if decree for divorce was granted as they were incompatible. The appellant had pleaded that they were both young and should be given the opportunity to start life afresh as per their wishes. The age of the appellant and respondent as on 21.4.2015 was 22 and 24 years respectively. On the aforesaid date they filed a joint petition that they were mutually agreeable for divorce and that she had been paid one time maintenance and that they had no further claims against each other. If the appellant and respondent desired to part ways amicably without rancour and start a new life, the Family Judge was expected to display more sensitivity. It was not yet another litigation with regard to property, service or a money claim or suit for specific performance. The present was a matter concerning two young human lives. Unfortunately they found themselves to be incompatible. Instead of bickering against each other wasting precious years of their youth they took a conscious decision of their own free volition without undue influence, fear or coercion to part ways respectfully. No social offence was committed by either of them because they ultimately found out that they were incompatible as human beings. 5. The Family Judge was expected to have a realistic approach to life and the law. Little did the Family Judge realise that a pedantic literal approach in the law would prove counter productive for both the parties and leave the law as a dead letter serving no useful purpose. What justice will mean in a case will depend on the facts of each case. The law has to be infused with life and not by interpreting it in a stultified manner without holistic appreciation. A pedantic approach on the part of the Family Judge has not only generated unwarranted litigation burdening the Court unnecessarily but has also resulted in what can well be described as injustice to the parties due to lack of application of proper judicial acumen and discretion to advance justice."

12. In the present case, as the respondent, though denied the allegations pertaining to mental and physical cruelty, has taken a

stand that he had already granted customary divorce to the appellant, the fact that the appellant has not been cross examined and no evidence in rebuttal was produced by the respondent, the finding on issue no.1 recorded by the trial court cannot be sustained and same is, therefore, reversed and it is held that the respondent was guilty of cruelty towards the appellant and appellant, therefore, is entitled to grant of decree for divorce.

13. Consequently, the appeal is allowed, the judgment dated 14/10/2015 passed by the Addl. District Judge No.1, Barmer is quashed and set aside, the petition for dissolution of marriage filed by the appellant is allowed and her marriage solemnized with respondent Khema Ram on 10/6/2011 shall stand dissolved.

14. No order as to costs.