CASE NO.:
Appeal (civil) 14740 of 1996

PETITIONER:
CHETAN DASS APPELLANT

Vs.

RESPONDENT:
KAMLA DEVI RESPONDENT

DATE OF JUDGMENT: 17/04/2001

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T..J
BRIJESH KUMAR, J.

This is an appeal by the husband challenging the judgment and order passed by the Rajasthan High Court, upholding the judgment passed by the District Judge, Sriganganagar, dismissing the petition of the appellant under Section 13 of the Hindu Marriage Act, 1955 praying for dissolution of marriage by granting a decree of divorce.

The appellant, Chetan Dass, and the respondent, Smt. Kamla Devi, were married on November 30, 1976 at Vijaynagar,@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ District Ganganagar according to the Hindu rites and@@ JJJJJJJJJJJJJJJJJJ rituals. The appellant was serving as Compounder in the Medical Health Department in the State of Rajasthan. After the marriage, the respondent was taken to Kirawad, the original village of the appellant, where she stayed for about 8-9 months. The appellant was posted in Government Hospital in Hanumangarh. He had been visiting his village home off and on. According to the appellant, since his village house was a kucha structure with insufficient residential accommodation, the respondent was not happy as she came from better background and standard of living. Therefore, she had always been interested in living with her parents in Vijaynagar. It is also the case of the appellant that the parents of the respondent always desired that he may get himself transferred to Vijaynagar and, for that purpose, many items of presentations in dowry at the time of marriage, for example, bed and bedding, sofa set, almirah and golden jewellery etc. were retained at Vijaynagar. It was, however, not possible for the appellant to live at Vijaynagar. The marriage of DW-3, Ravi Kumar, the brother of Kamla Devi, was to take place in November, 1977 and, in that connection, she left for her parents house at Vijaynagar in October, 1977. She did not return after the marriage of her brother despite requests made by the appellant and his parents for her return. On the other hand, it is stated that she started making allegations against the appellant for leading an adulterous life. The appellant felt mentally tortured on such false allegations.

He, therefore, filed an application under Section 13 of the Hindu Marriage Act after about 2 years of the marriage but later the relations between the two improved. The appellant, therefore, got his petition for divorce dismissed. Kamla Devi started living at the residence of Chetan Dass in Kirawad and they had also consummated their marriage. The case of the appellant further is that as desired by Smt. Kamla Devi, Chetan Dass brought her to Ganganagar and both started residing in Ganganagar. But this could not pull on for long and the respondent is said to have always been pressurising the appellant to permanently reside in Vijaynagar. After some time, Lokuram, father of the respondent, took her back to Vijaynagar. All efforts made by the appellant, his relatives and members of their community failed to persuade Kamla Devi to return to live with Chetan Dass any more. According to the appellant, the brief period during which Kamla Devi had changed her attitude and had started living with him was not a genuine gesture on her part or an effort to live together rather it was for the purpose that the appellant got his divorce petition dismissed. The relations between the two further deteriorated and a complaint is also said to have been filed by the respondent under Section 494 read with Section 120-B IPC. According to the appellant, the respondent had been keeping away from the company of the appellant and had not been discharging her matrimonial obligations. Such attitude on her part ultimately resulted in the filing of a petition by the appellant for restitution of conjugal rights in the year 1982. The respondent filed her written statement denying the allegations made against her and further stated in the reply that the appellant had been carrying on illegitimate relationship with one Ms. Sosamma Thomas, a nurse in the hospital. According to the appellant, the allegations made by the respondent mentally tortured him and looking to her conduct and behaviour in deserting him without any reasonable cause, he got the petition amended by moving an application under Order 6 Rule 17 CPC which was allowed, making a prayer for dissolution of marriage converting the petition from one under Section 9 to Section 13 of the Hindu Marriage Act on 23.7.1986.

The respondent contested the petition and refuted the allegations made against her. According to her, she never objected to or expressed any dissatisfaction on account of alleged uncomfortable stay at Kirawad. On the other hand, she stayed there with the parents of the appellant without any objection. Her main grievance was with regard to the relationship which, according to her, exists between the appellant and Ms. Sosamma Thomas who is a nurse in the hospital. The trial court, on the basis of pleadings, framed two issues :-

(1) Whether Kamla Devi has deserted the plaintiff Chetandas for two years prior to the filing of the application and thus applicant is entitled for a decree of dissolution of marriage?

(2) Whether the respondent Kamla Devi treated the plaintiff Chetandas with cruelty if so, the plaintiff is entitled to dissolve his marriage with respondent by decree of divorce?

The third issue was about the relief to which the plaintiff may be found entitled to.

The petitioner-appellant examined only himself in support of his case. The respondent besides herself examined her father Lokuram -D.W.1, D.W.-3 Ravi Kumar, her brother and D.W.- 4 Banwari Lal.

The trial court considered the matter in great details in the background of the evidence available on record. The respondent Smt. Kamla Devi stated in her statement that the allegations made against her that she was unwilling to live with the petitioner and his parents at Kirawad was incorrect. As a matter of fact, according to her, she had no complaint whatsoever against the parents of her husband and had been staying there with them in Kirawad without any difficulty. She also denied the allegations that she wanted Chetan Dass to live permanently in Vijaynagar. In the year 1980, when the appellant had taken her to Ganganagar to live with him on the persuasion of his father and others, the nurse Sosamma Thomas was living in the upper storey of the same building. The sister of Chetan Dass was also sent to accompany the respondent, perhaps with an idea that it may bring some normalcy in the conduct and behaviour of Chetan Dass. But despite that, the case of the respondent has been that Chetan Dass normally lived in the upper storey with Sosamma Thomas and has been taking his food and sleeping with her. It was against all norms and an open defiance to the matrimonial relationship. Yet another fact which finds place on the record is that on the efforts made at the instance of the father of the respondent, Sosamma Thomas was transferred outside but she did not go there to join. The appellant again got her transferred to Ganganagar from Nachana hospital in District Jaisalmer. During this period Sosamma remained on leave. All efforts made by Lokuram, the father of the respondent, and the respondent herself went in vain and the appellant is said to have refused to leave Sosamma Thomas though, he had made such a promise before the other people of the community namely, Narendra Nath Gauri, his uncle and others on the basis of which she had gone to Ganganagar to live with him. The father of the respondent namely, D.W.1- Lokuram, stated in his statement that so long as his daughter stayed in Kirawad, she never made any complaint against the behaviour of her in-laws.

The appellant only admitted that Sosamma Thomas was a nurse posted in Ganganagar hospital and he knew her only as one of the member of the staff. He had not denied that he resided at 160, Mukherjee Nagar in Sriganganagar. But he feigned his ignorance about the fact that Sosamma Thomas was also living in the same building in the upper storey in Ganganagar. The trial court has also observed that he could not deny that his sister Rajrani, who was sent to live with them in Ganganagar, had complained to his parents about his relationship with the nurse Sosamma Thomas. The trial court also observed that the petitioner did not examine any witness in support of his case nor even his brother, sister or parents. The respondent had come out with a definite assertions that in Ganganagar, she was living with Rajrani, the sister of Chetan Dass who had accompanied her to Ganganagar whereas Chetan Dass was practically living in the upper storey in the room of Sosamma Thomas and had been taking his food and sleeping there only. The court below had also observed that Rajrani could very well throw some light on the state of affairs on this point.

The respondent, Smt. Kamla Devi, also denied the allegation that she wanted Chetan Dass to live in@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ Ganaganagar or she expressed any dissatisfaction on her part@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ about the standard of living of Chetan Dass in his village Kirawad. None of the relations of the appellant namely, the parents or brothers or sisters made any complaint against the behaviour of Kamla Devi, besides her brother, D.W.-4 Banwari Lal had also supported her case.

The trial court thus considering all the evidence and the facts and circumstances of the case, came to the@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ conclusion that there existed illegitimate relationship@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ between Chetan Dass and Sosamma Thomas. The affair was since prior to the marriage which continued even thereafter. It is further held that in such circumstances, it is not possible for any self- respecting woman to live with her husband. Besides the findings as indicated above, it has also been found that the main allegation made by the appellant about desertion by Smt. Kamla Devi, on the ground that his house at Kirawad was in bad condition and their standard of living was unsatisfactory and that she wanted him to permanently shift to Vijaynagar, was incorrect and baseless. Considering certain decisions, the learned Judge held that where a wife refuses to live with the husband having relationship with another woman, in such a situation, the conduct of the wife cannot be termed as wilful desertion of her husband. The reasons thus given by the respondent for keeping away from the company of her husband has been found to be valid whereas the reasons assigned by the appellant for his wife being not ready to live with him, have been found to be false. The trial court thus refused to grant decree of divorce by dissolving the marriage.

In the appeal preferred by the appellant in the High Court, the findings recorded by the trial court have been upheld. The Appellate Court also made an observation that in the facts and circumstances of the case, the best evidence would have been of the persons living in the neighbourhood of the couple in Sriganganagar and the evidence of petitioners father and his sister Rajrani as they are said to be aware of the adulterous behaviour of the petitioner-appellant. In our view, the said observation is quite correct. Rajrani, the sister of the appellant, accompanied the respondent to live with the couple namely, Chetan Dass and Kamla Devi, her brother and his wife respectively. There is no dispute that she lived with them. According to the respondent, the appellant had practically been living, having his meals and staying by night, in the upper storey of the house in occupation of Sosamma Thomas. The Appellate Court was perfectly justified in observing that the evidence of the appellants sister would have been quite crucial. But she was not produced by the brother in support of his case. The father of the appellant also did not come to his rescue by entering into the witness box for his son who could very well support the case of the appellant at least to the extent, if it was true, that the respondent was unhappy due to the alleged unsatisfactory living condition in Kirawad. From the side of the respondent, her father and brother had entered into the

witness box and nothing seems to have been elicited to disbelieve their statements or establish that they were taking shelter under falsehood. No presumption can be raised that they have given false evidence in favour of the respondent being her close relations or her own kith and kin. Apart from those persons, D.W.-4 also supported her case. The learned Appellate Court, in our view, rightly came to the conclusion that the relief could not be granted to the appellant by passing a decree of divorce by dissolving the marriage on the ground that the marriage had broken down irretrievably.

Learned counsel for the appellant has vehemently urged that the facts and circumstances of the case clearly show that the relationship between the respondent and the appellant has totally broken and there seems to be no chance of retrieval at all. He has also emphasised on the fact that a long period has lapsed since the marriage was performed in the year 1976. They lived together only for a short stint. Initially the respondent stayed in Kirawad immediately after the marriage and remained there for 8 or 9 months and later in the year 1981 when she went to live with the appellant in Sriganaganagar. It was also for a period of about three months. The rest of the period they lived apart. In such circumstances, it is submitted that it will serve no purpose to prolong the agony and it may only be appropriate that the bond of marriage be snapped by granting a decree of divorce and the parties may feel relieved and pass rest of the period of their life peacefully.

During the course of the arguments, learned counsel for the appellant, so as to show that the allegations made against the appellant about having illegitimate relationship with Sosamma Thomas, submitted that the appellant is still prepared to keep the respondent Kamla Devi with him. According to him, the appellant never refused to live with her. In reply, learned counsel for the respondent submitted that the respondent was also prepared to live with the appellant provided that he discontinued his relationship with Sosamma Thomas. The hollowness of the submission that the appellant was still prepared to keep the respondent with him is quite apparent. It is on the record that it was on some undertaking that the respondent was taken to Ganganagar by the appellant to live with him but there she was subjected to humiliating treatment meted out to her by the appellant himself having his food only in the room of Sosamma Thomas and staying there during night leaving his wife and sister alone on the ground floor. With this kind of attitude, the offer as made on behalf of the appellant is too shallow to deserve any serious thought. At the same time, the condition on which the respondent is prepared to live with him seems to be quite justified, that is to say, she is still prepared to live with him provided he behaves and snaps his relationship with the other woman. It is apparent that it is the own conduct of the appellant which lead the respondent to live separate from the appellant. None else, but the appellant alone, is to be blamed for such an unhappy and unfortunate situation. The findings of facts, as recorded by the two courts below, do not deserve to be disturbed in any manner nor they have been seriously assailed before us.

As observed earlier, the learned counsel for the appellant has merely stressed for grant of relief on the ground that the marriage has completely failed and has

irretrievably broken. In connection with this submission, it may be observed that it all depends on the facts and circumstances of the case as to in which case it would be appropriate to grant the relief as prayed.

Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by Statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well knit, healthy and not a disturbed and porous society. Institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of irretrievably broken marriage as a straight jacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.

Learned counsel for the appellant has placed reliance on certain decisions in support of his request to grant the relief on the ground that the marriage has irretrievably broken down. The decision of this Court reported in (1993) 4 SCC 232 [Chanderkala Trivedi (Smt). vs. Dr. S.P. Trivedi] has been cited. The facts of this case are peculiar in nature. The husband filed a petition for divorce on the ground of cruelty at the hands of the wife. The wife, in reply, made allegations of adultery against the husband whereas the husband had made allegations against undesirable association of the petitioner-wife with young boys. The trial court though dismissed the petition but found that the behaviour of the wife was not that of a Hindu married woman. This has been the finding of all the courts below. There were thus counter allegations of adulterous life of the husband with another lady doctor whereas undesirable association of the wife with other young boys. As observed earlier, the findings were recorded by all the three courts and the High Court in appeal granted the relief of divorce on the ground of cruelty. This Court, however, ordered for deletion of the findings recorded in the judgments of all courts against the wife but maintained the decree of divorce and dismissed the appeal. Such facts and circumstances of the case relied upon by the appellant are not applicable to the present case. The factual position is entirely different. Both the parties, according to their respective allegations, have been sailing in the same boat. Looking to the facts and circumstances of the case, this Court ordered for deletion of the findings against the wife while maintaining the decree. This case, in our view, has no application to the present case.

The other case cited by the learned counsel for the appellant is reported in (1995) 2 SCC 7 [Romesh Chander vs. Savitri (Smt.)]. In that case, at the very outset, it may be observed that the Order was passed considering the facts and circumstances of the case in exercise of power under Article 142 of the Constitution. Allegations were made by the wife against the husband about his mixing with undesirable girls but no evidence was given to support those

allegations nor the same were found proved. The husband however had expressed his remorse on his conduct and neglect of his wife. It was considered that where the marriage had broken down emotionally and practically, looking to such facts and circumstances, the marriage was dissolved exercising powers under Article 142 of the Constitution.

Yet another case relied upon by the learned counsel for the appellant is reported in (1984) 4 SCC 90 [Smt. Saroj Rani vs. Sudarshan Kumar Chadha]. In our view this case is also not applicable to the present case. The husband did not obey the decree of restitution of conjugal rights obtained by his wife to which he had not objected but later on, he filed a petition for divorce under Section 13 (1-A)(ii) on the ground that one year had passed from the date of decree of restitution of conjugal rights but no actual co-habitation had taken place between the parties. A plea was raised that the husband was taking advantage of his own wrong as he had not resumed his matrimonial relationship even after the decree of restitution of conjugal rights instead filed a petition for divorce, that the parties had not cohabited even after one year of passing of the decree. This Court observed that a decree of restitution of conjugal rights was executable and further observed that the expression in order to be a wrong within the meaning of Section 23(1)(a) the conduct alleged has to be something more than mere disinclination to agree to an offer of reunion, it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled to. On facts also, it was found that such a plea was not entertainable since no new facts were brought on record even by means of an amendment that the husband had, by way of a scheme, agreed for passing of a decree of restitution of conjugal rights with a view to ultimately claim divorce by not resuming the matrimonial relationship. In the present case, the allegations of misconduct of adulterous behaviour have definitely been made by the wife which have been found to be correct. Hence, this case would also be of no help to the appellant.

Learned counsel for the respondent submits that in certain situations, relief would be denied to the petitioner where it is found that he is taking advantage of his own wrong for the purposes of making out a case to obtain the decree. He has drawn our attention to Section 23(1) Clauses (a), (b) and (e) of the Hindu Marriage Act which are quoted below:-

23. Decree in proceedings.- (1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that

(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause

(b) or sub-clause (c) of clause (ii) of section 5 any way taking advantage of his or her own wrong or disability for purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of Section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of or where the ground of the petition is cruelty the petitioner

has not in any manner condoned the cruelty, and

(c)

(d)

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the Court shall decree such relief accordingly.

In the present case, the allegations of adulterous conduct of the appellant have been found to be correct and the courts below have recorded a finding to the same effect. In such circumstances, in our view, the provisions contained under Section 23 of the Hindu Marriage Act would be attracted and the appellant would not be allowed to take advantage of his own wrong. Let the things be not misunderstood nor any permissiveness under the law be inferred, allowing an erring party who has been found to be so by recording of a finding of fact in judicial proceedings, that it would be quite easy to push and drive the spouse to corner and then brazenly take a plea of desertion on the part of the party suffering so long at the hands of the wrong-doer and walk away out of the matrimonial alliance on the ground that marriage has broken down. Lest the institution of marriage and the matrimonial bonds get fragile easily to be broken which may serve the purpose most welcome to the wrong-doer who, by heart, wished such an outcome by passing on the burden of his wrong-doing to the other party alleging her to be the deserter leading to the breaking point.

In this case, we also find that the respondent is still prepared to live even at this stage of her life with the appellant but rightly on the condition that the appellant disassociates himself from Sosamma Thomas. There has been no cause of grievance or any allegation of objectionable behaviour by any one except the meek plea put forward by the husband that she was dissatisfied with the living conditions at Kirawad and she wanted him to live in Vijaynangar. Such allegations have been found to be incorrect. She also lived in Ganganagar. Had only living in Kirawad been the problem, there was no occasion for her to be dissatisfied in living in Sriganganagar, at least none has been indicated by the appellant.

In this case, the averments made in the petition for obtaining a decree for divorce, namely, desertion on the part of the wife without any reasonable cause have not been found to be correct. The petition was liable to be dismissed on that ground alone. The defence of the respondent for having a justified reason to live away from the husband has been found to be correct. Behaviour of the appellant certainly falls in the category of misconduct on his part. In such circumstances, it is too much on his part to claim that he be given the advantage of his own wrong and be granted a decree of divorce on the ground of desertion on the part of his wife who is still prepared to live with him provided he snaps his relationship with the other woman. Similar offer had also been made on behalf of the appellant, which, we have already dealt in the earlier part of the Judgment. He perhaps prefers to snap relationship with the respondent rather than with Sosamma Thomas. A decree of divorce on the ground of marriage having been irretrievably broken cannot be granted in the facts and circumstances of

the case as indicated above.

In the result, the appeal has no merit and it is dismissed with costs which is assessed as Rs.10,000/-.

JUDIS