CASE NO.:
Appeal (civil) 6409-6410 of 2004

PETITIONER:
Shyam Sunder Kohli

RESPONDENT:
Sushma Kohli @ Satya Devi

DATE OF JUDGMENT: 01/10/2004

BENCH:
S. N. Variava & H. K. Sema

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (C) Nos.1948-1949 of 2003)

S. N. VARIAVA, J.

Special leave granted.
Heard parties.
These Appeals are against the Judgment dated 14th August, 2002 of the Delhi High Court. By this Judgment, two Letters Patent Appeals have been disposed of.

Briefly stated the facts are as follows.

The Appellant and the Respondent were married on 18th November, 1981. The Appellant claims that the Respondent left the matrimonial home on 28th January, 1987. The Respondent denies this. The Respondent claims that she was driven out of the matrimonial home. She claims that she was always and even now is ready to stay with the Appellant. On a question from Court, counsel for the Appellant states that the Appellant is not willing to take back the Respondent.

On 27th April, 1991, the Appellant filed a Divorce Petition on grounds of cruelty and desertion. The Trial Court, after considering the evidence of the parties and the material on record, held that the Respondent had not proved cruelty or desertion and thus dismissed the Petition.

The Appellant filed an Appeal under Section 28 of the Hindu Marriage Act, 1955 in the Delhi High Court. The High Court also held that the Appellant has not been able to prove cruelty. The Single Judge of the High Court, however, held that the Respondent had deserted the Appellant without sufficient cause and granted divorce on that ground.

The Respondent filed L. P. A. No.593 of 2000 against the Order granting divorce on the ground of desertion. The Appellant filed L. P. A. No.82 of 2001 against that portion of the Order, wherein it has been held that cruelty was not proved. Both these L. P. As. have been disposed of by the impugned Judgment. The Division Bench has also held that the Appellant has not been able to prove cruelty. It has held, on an appreciation of evidence and material, that there was no desertion by the Respondent. Thus, the Order of the First Appellate Court has been set aside and the Petition has been dismissed.

We have heard the parties and gone through the material on record. Very fairly, in view of concurrent finding of facts, by all the

courts below, the ground of cruelty is not pressed. We find ourselves in agreement with the finding of the Trial Court as well as observation in the impugned Judgment that the Appellant has not been able to prove that the Respondent had deserted him. The evidence on record indicates that the Respondent had been forced to leave the matrimonial home. We are in agreement with the findings that the case of the Appellant, that he had made attempts to get her back, cannot be believed.

An attempt was made to rely upon various documents in order to show that the Respondent was holding herself out as the wife of one Hari Shankar Sharma. However, we find that the documents had not been referred to nor relied upon in the Petition. They had not been disclosed by the Appellants. During the course of evidence on his behalf, no attempt was made to prove these documents. For the first time when the Respondent entered the witness box, she was confronted with these documents. She has denied that she has taken out any Life Insurance Policy. She has explained how her name is there in a Bank Account jointly with Hari Shankar Sharma. Even after the Respondent explained the documents, no attempt has been made to prove these documents. As these documents have not been proved or marked in evidence, we are of the opinion that no reliance can be placed on these documents.

Thus, we find that no case for desertion is made out.

Faced with this situation, it was submitted that the marriage has irretrievably broken down. It was submitted that on this ground the divorce may be granted by this Court. In support of this submission, reliance was placed on the authority of this Court in L. V. Jadhav Vs. Shankarrao Abasaheb Pawar & Ors. [(1983) 4 SCC 232].

On the ground of irretrievable break down of marriage, the Court must not lightly dissolve a marriage. It is only in extreme circumstances that the Court may use this ground for dissolving a marriage. In this case, the Respondent, at all stages and even before us, has been ready to go back to the Appellant. It is the Appellant who has refused to take the Respondent back. The Appellant has made baseless allegations against the Respondent. He even went to the extent of filing a complaint of bigamy, under Section 494, IPC, against the Respondent. That complaint came to be dismissed. As stated above, the evidence shows that the Respondent was forced to leave the matrimonial home. It is the Appellant who has been at fault. It can hardly lie in the mouth of a party who has been at fault and who has not allowed the marriage to work to claim that the marriage should be dissolved on the ground of irretrievable break down. We, thus, see no substance in this contention.

For the above reasons, the Appeals stand dismissed with no order as to costs.